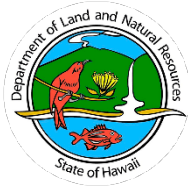


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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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 2469
RELATING TO UPDATING PUBLIC LAND LEASES ISSUED PURSUANT TO
CHAPTER 171, HAWAII REVISED STATUTES

House Bill 2469 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.

House Bill 2469 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 apply to extended leases. 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 on this measure.

HB-2469

Submitted on: 1/31/2024 5:20:42 PM

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

Submitted By	Organization	Testifier Position	Testify
clara loprinzi	Na Iwi Kupuna	Oppose	Written Testimony Only

Comments:

BLNR has not in the past shown themselves accountable for public land issues. Administration is not accountable to being pono and making the right decisions, instead of power grabbing of more lands.

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

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

OPPOSE

HB2469 - Relating to Updating Public Land Leases, etc.

Aloha Chair Ichiyama

This bill seeks to "update the lease terms and conditions to reflect the most current standard lease form terms and conditions".

I could support that if the intent is to modernize land management practices to reflect current market practices and community needs. However the conditions that are specified in this bill are not that. In fact they will further dampen interest in the lease of public lands which are already slight, if not non-existent.

It may be of benefit in your deliberations if the Land Division were to provide a list of all new leases of unimproved state lands for industrial, commercial or resort use in the last 20 years. Or even any new lease of improved lands, as distinct from extensions to an existing lessee, their heirs or assigns. The result may serve as instructive as to the Land Divisions capacity to manage public lands to the benefit of the actual public, rather than the interests only of the Land Division. Existing lessees are more likely to accept onerous terms foisted upon them unilaterally in order to preserve their tenancy and the investments in improvements and the location during their historical tenure. Thus an extension to an existing lessee is not considered a "market comparable" for purposes of valuations or the conditions of the lease itself.

In part (g) of this bill (pg 7) the proposal states "may include the imposition of a removal bond". I have contacted appraisers, CPA's, other lessee's, a former ground lessor executive, a trustee of a large lessor, and an insurance broker and no one either knows what this is or how it could possibly work. Please request a copy or description of what a "removal bond" is for the public's benefit. Only the insurance broker thought this was a good idea, he thought it sounded extremely profitable !

In Section 3 (b) (3) the department seeks to have future fair market rent be based on the value of both the land, which the state owns, and the improvements, which the state has never owned under 171-36.5. Should the state go through the reversion of the lease and take ownership of the improvements then establishing rent based on land and improvements may be "fair". Here this valuation is being imposed without the state having assumed any risks of ownership. This is not compatible with market practices and it's obviously unfair to the lessee. The lessee would have no equity in the property. I can't imagine why anyone would think this is an improvement in leasing practices and it no way reflects the market.

Finally, this bill seeks to amend HRS 171-192 (c)(8) by removing it's specific condition for amending of leases be by way of Hawaii Administrative Rules;

8) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.

DLNR has chosen not to abide by this requirement and here it seeks to amend the statute to reflect this practice. DLNR supports rule making in various divisions, including DOBOR and OCCL, yet DLNR Land Division declines to accept rule making instead preferring it's internal policies. This committee should make clear to the department that adhering to existing law is the mandate of all state agencies and ignoring the policy established by the Legislature is unacceptable.

Please Defer this bill,

Jim McCully

HB-2469

Submitted on: 1/30/2024 6:25:43 PM

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

Submitted By	Organization	Testifier Position	Testify
Dr. Jim Anthony	Individual	Comments	Written Testimony Only

Comments:

The following comments are offered:

1. The Bill as it stands is incomplete.
2. HB 2469 as submitted fails to address crucial issues arising out of HRS 516 (*the lease to fee conversion statute) which became law in 1967. Sections 1, 2, 3 and 83 are particularly pertinent to 65-year residential leases issued to 31 lessees in Kahana Valley State Park in 1993. These matters have been before the Department of Land and Natural Resources for several years as recently as 2023. A \$200,000 taxpayer funded study was commissioned by DLNR's Division of State Parks around 2018 when completed was then unceremoniously buried. Dawn Chang, a member of the Governor's Cabinet, Chair of BLNR, has been extensively and repeatedly informed about these problems. Madame Chang has apparently not informed the Governor about this particular matter. Failure to address these matter in the proposed change to Chapter 171 renders HB 2469 incomplete.
- 3, The Committee on Land and Water and other Committees of the House which deal with this Bill should defer any action on it until the matters we raise here in summary are addressed fully and comprehensively.

Besides raising these comments **I ALSO OPPOSE THE BILL AT IT STANDS.**