

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY**

**Wednesday, February 12, 2019
4:00 PM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1117, HOUSE DRAFT 1
RELATING TO STATE LANDS**

House Bill 1117, House Draft 1 proposes to require the Board of Land and Natural Resources (BLNR), Board of Agriculture (BOA), and the Agribusiness Development Corporation (ADC) to ensure the timely collection of lease payments, track lessees that are in arrears of lease payments, and offer payment plans for lessees in arrears. The measure additionally proposes to prohibit land leased by ADC from being assigned or sublet without ADC approval. **The Department of Land and Natural Resources (Department) opposes this measure to the extent it proposes to amend Chapter 171, Hawaii Revised Statutes (HRS).**

The Department takes no position on the bill's proposed amendments to Chapter 166 and 163D, HRS, and defers to BOA and ADC on the amendments to their respective statutes. However, the Department opposes the mandatory rule-making regarding collection of lease rents that is provided for in the proposed amendment to Section 171-13, HRS.

The Department's leases specify the due date for rent payments and additionally provide that interest and late charges will be imposed on unpaid rents. Further, the Department's leases provide that non-payment of rent is a basis for the Department to issue a notice of default to the lessee, which if not cured within 30 days, leads to a breach of the lease and its potential termination by the BLNR. The collection of lease rents is largely an accounting function handled by the Department's Fiscal Office. Because the payment of rent, interest and late charges is governed by the lease and applicable law and handled through generally accepted accounting principles with the aid a computerized database, the Department does not believe rules "to ensure the timely collection of lease payments and to track lessees that are in arrears of payments" are necessary or helpful.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

House Bill 1777 also proposes amendments to Sections 171-20 and -39, HRS, to add language referencing payment plans approved by the BLNR.¹ The Department's concern with this language is that the BLNR is not in the lending business and does not routinely approve payment plans for arrears in rent, although it has approved payment plans in exceptional cases. Usually, a lessee can obtain a more favorable interest rate on a loan from a private lending institution than it can on a payment plan with the BLNR. The Department is concerned that the proposed amendment could be interpreted to mean that the BLNR is under an obligation to make a payment plan available to any lessee who requests one, which is not the case. Accordingly, the Department proposes the following amendments (in gray highlight) to SECTIONS 3-4 of the bill:

~~[SECTION 3. Section 171-13, Hawaii Revised Statutes, is amended to read as follows:~~

~~"§171-13 Disposition of public lands. (a) Except as otherwise provided by law and subject to other provisions of this chapter, the board may:~~

~~(1) Dispose of public land in fee simple, by lease, lease with option to purchase, license, or permit; and~~

~~(2) Grant easement by direct negotiation or otherwise for particular purposes in perpetuity on such terms as may be set by the board, subject to reverter to the State upon termination or abandonment of the specific purpose for which it was granted, provided the sale price of such easement shall be determined pursuant to section 171-17(b).~~

~~No person shall be eligible to purchase or lease public lands, or to be granted a license, permit, or easement covering public~~

¹ A mandatory payment plan provision seems contrary to the public taxpayer sentiment that government agencies should diligently collect taxes, rents and other debts owed to the State. Mandatory payment

~~lands, who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof.~~

~~(b) The board shall adopt rules pursuant to chapter 91 to ensure the timely collection of lease payments and to track lessees that are in arrears of lease payments."~~

SECTION ~~[4.]~~3. Section 171-20, Hawaii Revised Statutes, is amended to read as follows:

"§171-20 Notice of breach or default. Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any lease or patent heretofore or hereafter issued under this chapter, the board of land and natural resources shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease or patent making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease or patent heretofore or hereafter issued

plans would be inapposite to that sentiment by rewarding delinquent or late paying tenants with a government loan.

under this chapter, the written notice shall include a demand upon the party to cure the breach within less than sixty days, but not less than five business days, after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided herein or within [~~such~~] any additional period as the board may allow for good cause[~~7~~] and upon failure of the lessee to establish a payment plan that may be approved by the board[~~7~~] in its sole discretion, the board [~~may~~], subject to section 171-21, may exercise [~~such~~] its rights as it may have at law or as set forth in the lease or patent."

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Acting Chairperson
Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF THE DEPARTMENT OF AGRICULTURE
BEFORE THE HOUSE COMMITTEE ON JUDICIARY

FEBRUARY 12, 2019
4:00 P.M.
CONFERENCE ROOM 325

HOUSE BILL NO. 1117 HD1
RELATING TO STATE LANDS

Chairperson Lee and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1117 HD1 relating to state lands. The purpose of this Bill is to require the Board of Land and Natural Resources, Board of Agriculture, and the Agribusiness Development Corporation to ensure the timely collection of lease payments, track lessees that are in arrears of lease payments, and offer payment plans for lessees in arrears. It also prohibits land leased by the Agribusiness Development Corporation from being assigned or sublet without corporation approval. The Department offers the following comments.

The proposed changes to HRS Section 100-6 add additional criteria for cancelling leases for lessees who are in arrears for lease payments, mandates lease cancellation when terms for default are met, and requires rulemaking. The Department is concerned that as modified, the Board of Agriculture will no longer have discretion to consider extenuating circumstances when a lessee becomes delinquent and is in default under the lease.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

TESTIMONY OF JAMES J. NAKATANI
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE COMMITTEE ON JUDICIARY
Tuesday, February 12, 2019
4:00 p.m.

HOUSE BILL NO. 1117
RELATING TO STATE LANDS

Chairperson Lee and Members of the Committee:

My name is James Nakatani, Executive Director of the Agribusiness Development Corporation ("ADC"). The ADC will provide comments on House Bill No. 1117, which requires the Board of Land and Natural Resources, Board of Agriculture, and the Agribusiness Development Corporation to ensure the timely collection of lease payments, track lessees that are in arrears of lease payments, and offer payment plans for lessees in arrears. Prohibits land leased by the Agribusiness Development Corporation from being assigned or subletted without corporation approval.

While we support the intent of this measure, we feel that the bill is unnecessary as the ADC practices what the measure is trying to accomplish. One of the most challenging aspects of land management is ensuring payments come in on time and enforcing compliance. The ADC already has a practice of offering payment plans for lessees in arrears with the State. Furthermore, prohibiting the assignment or subleasing the whole or any portion of the Licensee/Permittee's premises without the prior written approval of the ADC Board is a standard condition in our license and permit.

Thank you for the opportunity to testify, and for your consideration of this bill.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

**HEARING BEFORE THE HOUSE COMMITTEE ON JUDICIARY
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
TUESDAY, FEBRUARY 12, 2019 AT 4:00 P.M.**

To The Honorable Chris Lee, Chair;
The Honorable Joy A. San Buenaventura, Vice Chair; and
Members of the Committee on Judiciary;

TESTIMONY IN SUPPORT OF HB 1117 HD1 RELATING TO AGRICULTURE

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce, with approximately 650 members. We appreciate the opportunity to support HB 1117 HD1.

We support businesses paying their bills on time and support the State, as the landlord of these ag lands, having mechanisms in place to collect lease payments on time. However, we recognize that businesses fall on hardships and this land is leased to an industry where there can be added hardships including natural disasters, weather issues, invasive species, etc. We appreciate that this bill includes the language that the state will help to create a payment plan to lessees to help them get back on track, as we are helping to sustain and grow the agriculture industry and not prematurely put farmers out of business. We also recognize that if lessees cannot continue to meet their obligations that there are appropriate ways to end the lease and allow others the opportunity.

Mahalo for your consideration of our testimony.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

HB-1117-HD-1

Submitted on: 2/11/2019 11:20:04 PM

Testimony for JUD on 2/12/2019 4:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Sandlin	Hawaii Cattlemens Council	Support	No

Comments: