

SB1166 SD2 HD2
RELATING TO RENTALS FOR PUBLIC LAND LEASES
Ke Kōmike Hale o ka ‘Oihana ‘Imi Kālā
House Committee on Finance

Malaki 31, 2021

1:30 p.m.

Lumi 308

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB1166 SD2 HD2, along with bill language to ensure that any reductions or waivers of rent for the demolition of improvements or provision of infrastructure 1) appropriately account for OHA’s and the Department of Hawaiian Home Lands’ (DHHL’s) potential shares of revenues under the Public Land Trust and the Hawaiian Homes Commission Act, respectively, and 2) are commensurate with the actual value such activities would provide for the State.

OHA appreciates this measure’s intent to provide the Board of Land and Natural Resources (BLNR) with flexibility in adjusting or waiving lease rent, based on a lessee’s investments in removing old improvements or installing basic infrastructure. However, OHA notes that reductions in rent to facilitate the removal of old or dilapidated improvements that the State, as a prudent landowner and fiduciary, should have required of previous lessees, should not diminish public land revenue amounts to which OHA or DHHL would be otherwise entitled. The State holds specific fiduciary obligations in its administration of lands, including “ceded” lands and Public Land Trust lands with Native Hawaiians and the public as specifically named beneficiary classes. **A failure on the State’s part to apply basic principles of due diligence and prudence in requiring previous lessees to remove old and unwanted improvements should not be used to reduce the benefits that would otherwise be realized by its beneficiaries.** Moreover, under this measure, neither OHA nor DHHL would have any input or role in negotiating rent waivers or reductions, which may impact their respective shares of lease revenues for two decades at a time. Accordingly, **OHA respectfully requests amendments, provided below, that would ensure that any reduction or waiver in rent for lessee’s removal of improvements take place only after the set aside of amounts to which OHA and DHHL may be entitled.**

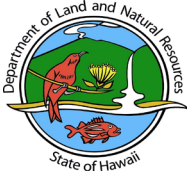
In addition, OHA notes that in some instances, rent reductions or waivers of up to 20 years may approach or exceed the useful life of certain types of infrastructure that would be installed by lessees. **In such cases, the full benefit of such infrastructure would be realized by lessees, with little to no equity left for the State to have justified its reduction or waiver of lease rent.** Accordingly, OHA respectfully requests amendments that would ensure a consideration of the useful life of installed infrastructure in the reduction or waiver of rent, so that any reductions or waivers are commensurate with the benefits that would be realized by the State.

Accordingly, should the Committee choose to move this measure forward, OHA recommends amending the language found on page 4, lines 17 through page 5, line 7, to read as follows:

"use; provided further that if a lease for resort, commercial, industrial, other business, or residential purposes requires a lessee to demolish existing improvements or provide basic infrastructure including drainage, sewer, water, electricity, and other utilities before the lessee can make productive use of the land, the board may approve a reduction or waiver of lease rental for a period of up to twenty years that shall not exceed the amount of the lessee's total expenditures for demolition or provision of the infrastructure or the value of the remaining useful life of the infrastructure at the end of the lease term, whichever is less, and provided that any reduction or waiver of lease rental for the demolition of existing improvements shall not reduce or waive any lease rent amounts required to be set aside or transferred pursuant to section 5(f) of the Admission Act of 1959 or section 213 of the Hawaiian Homes Commission Act of 1920, as amended;"

Mahalo for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
FINANCE**

**Wednesday, March 31, 2021
1:30 PM**

State Capitol, Via Videoconference, Conference Room 308

**In consideration of
SENATE BILL 1166, SENATE DRAFT 2, HOUSE DRAFT 2
RELATING TO RENTALS FOR PUBLIC LAND LEASES**

Senate Bill 1166, Senate Draft 2, House Draft 2 proposes to authorize the Board of Land and Natural Resources (Board) to approve rental reductions or waivers for leases on public lands that require substantial demolition or infrastructure improvement costs for the lessee to utilize the premises. **The Department of Land and Natural Resources (Department) strongly supports this Administration measure.**

Currently, Chapter 171, Hawaii Revised Statutes, limits the amount of rent reduction or waiver that a lessee of public lands can receive for redeveloping or improving public lands to one year's rent for land leased for resort, commercial, industrial or other business use. In many cases, a rent reduction or waiver equal to one year of ground rent would be an insufficient incentive to induce a developer to invest in the demolition of aged improvements on and redevelopment of public land, or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public land. This measure seeks to authorize the Board to approve a rent reduction or waiver for up to twenty years not to exceed the amount of the lessee's total expenditures for demolition of improvements or provision of infrastructure.

There are a number of long-term leases of public lands originally entered into in the 1940s that have expired in recent years. Some of these leases were used for hotels, and significant hotel improvements were constructed on the premises during the lease term. In some cases, the leasehold improvements have exceeded their useful life and require costly demolition in the range of \$8-10 million for a single property. However, the lease forms used for these leases did not require the lessee to remove the improvements at the expiration of the lease term. As a result, the demolition cost falls on the State unless the State can pass the cost on to a future lessee who undertakes redevelopment of the land. One alternative would require a significant commitment of public funds at a time when critical priorities are competing for a limited amount of resources. Furthermore, simply passing the responsibility to a prospective lessee to assume such high costs

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

with no avenue for relief will significantly deter demand for the property, reducing the likelihood of a successful development.

Additionally, the Department is currently conducting planning for projects to develop state lands for resort, commercial, industrial, and other business or residential use, for the purpose of generating income to support the Department's resource management and protection programs, including the East Kapolei Transit Oriented Development (TOD) Project and proposed industrial and business park at Pulehunui, Maui. However, substantial investments in infrastructure including drainage, sewer, water, electricity, and other utilities will be required to facilitate development of the lands with costs in the tens of millions of dollars. As with the previous scenario, rather than rely solely on public funds, the State seeks to defer, either whole or in part, the infrastructure and other development costs of these lands on to a future lessee of the lands. This measure would facilitate that objective, while also helping to ensure the long-term success of projects that benefit the Department and the State as a whole.

Thank you for the opportunity to comment on this measure.

REPORT CARD for DLNR

FIDUCIARY OBLIGATIONS 101	F-
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STOP SB 1166 !

The State holds specific fiduciary obligations in its administration of “ceded” lands and Public Land Trust lands with Native Hawaiians and the public as beneficiaries.

Failure by the State’s Department of Land and Natural Resources to apply basic principles of due diligence and prudence in requiring previous lessees on public lands to clean up their mess **earns the State a grade of F.**

Failure by the State’s Department of Land and Natural Resources to act with duty of loyalty and duty of care in the interest of its beneficiaries by making deals of rental reductions or waivers for new lessees on public lands *without ensuring protections for its beneficiaries* (SB1166, SD2 HD2) **earns the State a grade of F-.**

Testimony of Kūpuna for the Mo‘opuna – SB 1166, SD2 HD2

Strong Opposition

COMMITTEE ON FINANCE - Chair Luke & Vice Chair Cullen, 3/31/2021 @ 1:30pm



STOP LEGAL THIEVERY!

Ua mau ke ea o ka ‘āina i ka pono!

SB-1166-HD-2

Submitted on: 3/29/2021 12:52:10 PM

Testimony for FIN on 3/31/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

Support

Will this also pertain to military and US Govt. leases or UH Leases like the telescopes? If not, it should. Why should we be paying to clean up after the lease is over? It should already be in their lease with back up enforcement.