

SB

1247

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: amel.s.chun@hawaii.gov
Subject: Submitted testimony for SB1247 on Feb 13, 2015 15:45PM
Date: Thursday, February 12, 2015 8:51:27 AM
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SB1247

Submitted on: 2/12/2015

Testimony for WTL on Feb 13, 2015 15:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Carty S. Chang	DLNR	Oppose	Yes

Comments: DLNR strongly opposes this measure.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
CARTY S. CHANG
Interim Chairperson

Before the Senate Committee on
WATER AND LAND

Friday, February 13, 2015
3:45 P.M.
State Capitol, Conference Room 224

In consideration of
SENATE BILL 1247
RELATING TO THE DISPOSITION OF PUBLIC LANDS

Senate Bill 1247 proposes to enable lessees of public lands to obtain financing to construct improvements while enabling these lessees to relinquish leases during the second half of the lease, and to ensure fair and equitable valuations and disposition of capital improvements in conjunction with the establishment of lease rents and public auctioning of relinquished leases. **The Department of Land and Natural Resources (“Department”) strongly opposes this bill.**

Despite the stated intent of the bill, the underlying intent of the bill appears to be: (1) to give existing lessees an advantage at the auction of new leases for their properties inasmuch as they would not have to pay for the residual value of their improvements; (2) to allow a lessee to relinquish a lease even when a mortgage obtained by the lessee still encumbers the leasehold property; and (3) to transfer the normal risks of the business of the lessee to the State.

The Department’s leases generally provide that the lessee owns any improvements it constructs during the term of the lease, but at the end of the lease, ownership of the improvements reverts to the State without compensation. The Board of Land and Natural Resources (“Board”) already has the discretion to entertain requests for early lease cancellation and to set the conditions under which the Board will agree to mutual cancellation. The proposed bill would strip the Board of that discretion and grant lessees the right to dictate when their leases would be terminated and the conditions on which state lands would thereafter be put out to public auction.

Financing:

This bill would not encourage lenders to provide financing to lessees. The bill's proposal to allow lessees to relinquish leases, at will and for any reason, during the last half of the term of the leases,

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INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

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ACTING 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

whether or not a mortgage acquired by the lessee still encumbers the leasehold property, would logically make the acquisition of financing for improvements more difficult. We do not believe that a financial institution is more likely to lend money to the lessee if the lessee may easily give up the leasehold property before the mortgage is paid off.

Transfer of business risks to the State:

Allowing lessees to relinquish leases, at will and for any reason, during the last half of the term of the lease, whether or not a mortgage acquired by the lessee still encumbers the leasehold property, with the promise of a payout of the residual value of the improvements constructed on the property whether or not the State or a new lessee finds the improvements desirable or usable, transfers the risks of the lessee's business conducted under the lease to the State of Hawaii. The State could be left "holding the bag" for the mortgage that encumbers the property while having to make sure that the relinquishing lessee is paid for the residual value of the improvements. No lease of state land could be put out for bid with a mortgage still encumbering the property.

The improvements could still have a residual value even though they may not be desirable or usable by the State or a new lessee. The bill would allow the Board to require that the lessee remove the improvements and restore the land, but it does not provide that the residual value payment to the relinquishing lessee will be extinguished if the improvements are removed.

Whether the improvements are useable or not, any re-leasing of the land with the improvements would give the relinquishing lessee an advantage under a public auction because the relinquishing lessee would not have to pay for the improvements.

Appraisal of residual value:

Under the bill, the lessee and not the State, initially selects the appraiser to determine residual value. If the Board does not agree with the lessee's appraisal value, the Department may contract with an appraiser who must be approved by the lessee. However, if the lessee disagrees with the Department's selection of the appraiser, the Board selects the appraiser. The residual value will then be determined through arbitration. The Department does not feel it should be a point of contention as to who the State selects as an appraiser since the lessee will have selected its own appraiser. As such, the Department does not support having the lessee approve the Department's appraiser.

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: anne.e.lopez@hawaii.gov
Subject: Submitted testimony for SB1247 on Feb 13, 2015 15:45PM
Date: Thursday, February 12, 2015 4:18:26 PM
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SB1247

Submitted on: 2/12/2015

Testimony for WTL on Feb 13, 2015 15:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Lopez	Department of Attorney General	Oppose	Yes

Comments: Deputy Attorney General, Daniel Morris, will be present at the hearing on SB1247 to testify.

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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 1247, RELATING TO DISPOSITION OF PUBLIC LANDS.

BEFORE THE:

SENATE COMMITTEE ON WATER AND LAND

DATE: Friday, February 13, 2015

TIME: 3:45 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Daniel A. Morris, Deputy Attorney General

Chair Thielen and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill proposes to create a new section in chapter 171, Hawaii Revised Statutes that gives lessees of state land the right to obtain compensation for the residual value of improvements existing on leased land relinquished to the State during the second half of the lease term. The stated purpose of the bill is to facilitate the ability of lessees to obtain financing for improvements and to provide an incentive for lessees to construct improvements on state land.

State leases already address the disposition of improvements on leased land at the end of the lease, whether the lease ends due to expiration of the lease term or at an earlier time due to cancellation, mutual termination, or other reasons. This bill allows a relinquishing lessee to obtain compensation for improvements at the end of the lease, despite wording in the lease providing that ownership of improvements reverts to the State at the end of the lease. This raises legal concerns that the bill improperly alters the terms of the lease contract to the detriment of the State, and improperly uses public funds for a private purpose in violation of article VII, section 4, of the Hawaii Constitution. In addition, this bill does not address circumstances where the relinquished lease is encumbered by a mortgage or where the State elects to exercise its discretion to require the lessee to remove the improvements at the end of the lease term without having to compensate the lessee for the value of the improvements. The methodology for appraisal of the improvements is also cumbersome and favors the lessee.

We respectfully ask the Committee to hold this bill.

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: jwmccully54@gmail.com
Subject: Submitted testimony for SB1247 on Feb 13, 2015 15:45PM
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SB1247

Submitted on: 2/12/2015

Testimony for WTL on Feb 13, 2015 15:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
James McCully	Individual	Support	No

Comments: Chair Thielen I regret not be able to attend the hearing and address any concerns made by other testifiers or committee members. I would be happy to discuss with you at any time. Jim McCully

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Subject: Submitted testimony for SB1247 on Feb 13, 2015 15:45PM
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SB1247

Submitted on: 2/12/2015

Testimony for WTL on Feb 13, 2015 15:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Kerry A. Umamoto	Individual	Support	No

Comments: Aloha Chair, I would like to ask your support in bill SB1247. By approving this bill, it would help us insure the future growth of business as well as give us as a fair chance to provide necessary improvements to current land being occupied. Thank you for your consideration

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