

HB 3120 HD2

LINDA LINGLE
Governor



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Chairperson, Board of Agriculture

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LATE

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON
AGRICULTURE AND HAWAIIAN AFFAIRS
MARCH 13, 2008
2:45 P.M.

HOUSE BILL NO. 3120, H.D. 2
RELATING TO ANIMAL QUARANTINE FACILITIES

Chairperson Tokuda and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 3120, H.D. 2 which amends chapter 142-3.5, HRS, to modify the provision requiring the Department of Agriculture to receive fair market rent for the lease of unused property at the Animal Quarantine facility. The Department supports the House Bill No. 3120, H.D. 2 with requested amendments.

Currently, chapter 142-3.5, HRS, adopted by the 2005 Legislature, authorizes the Board of Agriculture to contract with third parties for the use and rental of animal quarantine station property or facilities under the following conditions: the property or facilities are not required for quarantine program use; the property be leased or rented at fair market value; and the property be used only by the third party. In addition to requirements of chapter 142-3.5, the methods of lease or rent of public lands are provided in chapter 171, HRS.

Executive Order No. 4096, dated January 10, 2005, sets aside land situated in Halawa Valley, Oahu, to be under the management and control of the Department of Agriculture and states, "hereby set aside for the following public purposes: animal quarantine; animal welfare; and agriculture related purposes." The parcel under consideration for rent is approximately 5.5 acres within the animal quarantine station zoned as I-2 with an estimated fair market rent for the leasehold interest of \$310,050 per year (as of December 2005).

The Department requests that lines 13 to 15 on page 1 be amended to be consistent with Executive Order No. 4096 to read:

"(3) The property or facilities shall be set aside for the following public purposes: animal quarantine; animal welfare; and agriculture related purposes; and"

The Department believes consistency with the Executive Order is necessary. An open and competitive bid process is expected to ensure the land is used appropriately and generates reasonable revenue to help offset program expenditures, ultimately resulting in reduced fees to users of the program.

TO: SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS, and SENATE COMMITTEE ON WAYS AND MEANS HEARING
DATE AND TIME: 03-13-08 at 2:45 pm
RE: OPPOSITION TO HB 3120, HD2 (HSCR772-08)RELATING TO ANIMAL QUARANTINE FACILITIES

Testimony of Frank De Giacomo, V.P. Animal CARE Foundation, Concerning Measure Number HB 3120, HD1, “Relating to Animal Quarantine Facilities”, to the Senate Committee on Agriculture and Hawaiian Affairs, and Senate Committee on Ways and Means, set for Hearing on March 13, 2008 at 2:45 p.m. in Conference Room 308.

Senators,

I am testifying in opposition to HB 3120, HD1.

Animal CARE Foundation is a 501(c)(3), not for profit organization here on O`ahu. Later this year we will be competing with the Hawaiian Humane Society (hereinafter “HHS”) for the Honolulu animal control contract. The City and County is wanting the potential contractors to provide much needed services to West O`ahu. If HHS gets the quarantine facility they will have a decided advantage in the bidding process, and that is problematic on many levels.

Some history is required for properly understanding the current issue at hand. HHS was given a 25 year lease at \$1 a year on their *state “owned” property* - that is, state land that has been deeded to the City and County of Honolulu *on the condition that* the land is used for pound facilities. HHS also used City and County funds commingled with their own to make millions of dollars in renovations and additions to their buildings and facilities, and generated false breakdown records for their animal control trucks to give friends on the Council the political coverage to donate all the vehicles to HHS on the alleged grounds that the repairs will cost the City and County too much money. In short they have a highly subsidized City and County of Honolulu created monopoly on animal control.

The new administration in charge of Honolulu wants long overdue service to West O`ahu, and intends to put the animal control contract out for a fairer bid later this year. HHS knew of this 3 years ago, and set out to get a sweetheart deal (similar to the one they already have with the State and Honolulu) for a new West O`ahu facility with the help of Governor Lingle. The idea (the one we gave to Linda Smith early on in the 1st Lingle term) of using the quarantine facility was set into legislation to direct the land to HHS, but not before other animal groups protested. So the conference committee decided, quite rightly, against the sweetheart deal and legislated that the state get “fair market value” for the lease rent of the property.

The bid was written and the contract was further steered by the Lingle Administration to HHS by: 1) Requiring that the entire 5.5 acres be leased as a whole and not subdivided into smaller units; 2) excluding commercial for profit bidders; and 3) strangely requiring proof of

ability to build up the property that excluded smaller nonprofit groups before they even could consider raising the funds needed. Lastly, they had to contend with my organization, which could meet all their qualifications. We called the Lingle administration asking for a ball park figure of when this lease would be put out for bid - since it was impossible to even remotely determine because it was the first time this property would be put out for bid, and this process had been dragging on for years. After a few phone calls to the Administration, they simply gave us a date far from when the bid actually was put out. So we missed it. Other individuals heard about the bid from Senator Hemmings - possibly to make the bid appear more fair when everyone was confident it could be steered to HHS. However, that is purely speculative on my part.

I believe that 3 bids were received. HHS bid \$0. Hawaii Dog Foundation bid. Also, despite the bid being written for nonprofits, one commercial dog training company put in a bid and I believe that bid was well in excess of HHS's bid. The State then entered negotiations with HHS over the value of the lease in the market. This was a long and protracted negotiation in which multiple ways of valuating the land was discussed, a report appraising the property was written, and claims of a hazardous landfill site on the property was investigated. I believe it came down to the State wanting around \$150,000 a year, and HHS still wanting to get the lease for next to nothing. So the State has put out an RFP for a broker to rebid and negotiate the land lease (at further taxpayer cost), and we are back here in the Legislature today discussing the removal of the offending "fair market value" provision.

This bill is flawed on many levels.

The State should not be in the business of steering a City and County contact toward a particular company with a sweetheart land deal, and perpetuating an illegal monopoly in the process (monopolies are illegal under state law). While I will not name names at this time, HHS has learned the value of buying legislation through campaign donations of its board members and rich socialite supporter friends. Last year 7 major labor bills were held hostage just to provide HHS a legislative victory and continued campaign donations to some politicians. Sadly, donations are what is also guaranteeing this bill's passage. This is what causes opposition in elections to form in order to "kick the rascals out" of office, and it is what causes intense support for candidates who can credibly claim to bring positive change to a corrupt and broken system.

Mr. Toyofuku testified on behalf of the Hawaiian Humane Society, stating that the Hawaiian Humane Society was unaware of the "fair market value" provision in the law because their bid was made *before* the law was enacted requiring fair market value be paid for the lease. Subsequently, they put in a zero dollar bid. I think he's mistaken. He was not with HHS at the time. The authorizing statutes were introduced into the legislature in January of 2005 and passed before recess. They supported the bill and submitted testimony in support of the bill. In fact I think they got the bill introduced. It was only in conference committee were the term "fair market value" was inserted. The bids were submitted in mid 2005. If you look at HRS 142-3.5 and HRS 142-28.5, you see the Legislative history

confirms that the sections in question were adopted in 2005. An article in the Honolulu Advertiser states that the winner of the bid was announced on August 2, 2005. Still HHS argued for 2 years that they should get quarantine for \$0, even though Ag agreed to a \$150,000 a year valuation of the lease, which is quite fair, and perhaps generous.

The Lingle Administration, and Mr. Toyofuku, further argued that HHS should get the land for free because they will be paying to build new state of the art facilities on the property for use of the general public and serve a public need.. This is simply a scam. When the bill to put the quarantine land up for bid was introduced there were also 4 other bills introduced at the same time for the state to pay for the facilities HHS was supposedly going to supply.

HHS has been trying to get the State to pay for the expensive improvements of the quarantine facility that they say they will make. It is the reason they won the bid and the reason no one else was qualified – because they would pay for all these great improvements. Then low and behold in 2006 *one* of the “angles” used to get the state to pay came in the form of legislation to give them money to pay for an “emergency shelter” for animals in case of a natural disaster. Of course, they can use the facility for whatever they want when there isn’t a natural disaster, and when there is they have a proven record of being able to kill tens of thousands of animals quickly, so they can probably even use it for whatever they want even when there is a natural disaster.

More importantly, after these unsuccessful legislative attempts, now HHS wants to circumvent public input altogether, and the will of the people, by applying for \$1.5 million for a legislative “grant in aid” (Program ID# AGR192 Leg Code 103-C) to build the facilities that the Administration has said HHS would pay for - the same outlay by HHS that was used to justify the land giveaway, and was the main deciding factor in what bidder to award the lease to among the three bidders. The bidders that were lucky enough to be able to find out about the bid for the lease that is.

The state shouldn’t be bilking the taxpayer either. If the state can get a fair market value, which my organization is willing to pay for quarantine, then why should the state be settling for a small token return. And if the state is required by deed to use it for animals or agriculture uses, why not open it up to commercial businesses. There are dog training schools, dog daycare companies, maybe even fuel crop farmers, among others who would be interested in bidding on the lease. There should be no corporate welfare for wealthy and politically well connected nonprofits on the backs of the vast majority of poor taxpayers are getting squeezed out of their homes, pinched at the pump, having tremendous difficulty finding affordable housing, and working three jobs just to pay their essential bills, all while state official after state official is saying we have no money to pay for essential and basic needs of the public. If anything there should be a bill for the state to take back their property on 2700 Waiialae Avenue and instead put that out for bid for more than a dollar a year.

During one hearing on HB 3120, State Veterinarian Jim Fappolli(sp?) stated that the reason Ag was leasing out the quarantine property was

because the cost of implementing the quarantine program had risen significantly due to the lessening of quarantine regulations. When asked "With hundreds of less animals being cared for for months at a time, why would costs be going up?", he replied basically that there was more paperwork and they have had to hire expert employees who get higher salaries. At another hearing, Dean Okamoto, said that the reason for renting out quarantine was not to make up for a general fund legislative shortfall in funding, but rather to reduce quarantine fees to the public. I am of the opinion that the Department of Agriculture is getting a backdoor funding increase in fiscally lean times for the State.

The Department of Agriculture, due to the easing of quarantine restrictions (hence the extra space to lease), really *should* have less costs and SHOULD NOT get the money for this lease to administer the quarantine program AND get the same money given to them by the Legislature to pay for the same quarantine program. If the reducing of quarantine stays is not reducing the cost of the program, perhaps there should be a hearing into exactly why (using great financial accounting detail), there has been no cost savings to the taxpayer. I have shepherded several animals through the quarantine process and I see no way that program should cost the same to administer now as it did before the changes to the quarantine process were eased. This is what is commonly referred to as "double dipping" at the trough of taxpayer dollars.

HHS should get no preferential treatment by the state. Claims that nonprofits cannot afford the property and don't want it are incorrect from my discussions with the many groups on the island, and does not even include all the for profit companies who deal with animals who would like it. The problem was no one knew of the bid because it was the first time it was put out for bid, and unlike HHS no one had inside knowledge of when it would be put out to bid. It is patently unfair and infuriating to the numerous animal rescue organizations throughout the state. Besides Animal CARE Foundation, there are a number of other animal organizations that are paying fair market value here on O`ahu. To name just a few:

Sylvester Foundation, which was recently thrown off it's land which was leased by DLNR because the state decided it wanted to increase it's financial return for the state land;

Hawaii Dog Foundation which has leased kennels at fair market value at a variety of locations around O`ahu throughout the group's history;

Wild Bird Rehabbers of O`ahu, who are paying fair market value for their facility (and greatly need space to expand) in the same area that HHS rents their 3 acre facility for \$1 a year;

HI Cat Foundation which has a crippling mortgage to pay;

Animal Haven which used every penny of the owners inheritance to afford their facility;

Friends for Life, who inherited their land but have increasing property taxes to pay;

Hawaii FI-DO, and K-9 Rescue also pay high property taxes;

Hawaii Pet Adoption Center rents;

and Joey's Feline Friends, I believe, rent at fair market value .

Claims that financial ability to build on the property is a major issue is open to undue influence by the Administration. HHS has a gold plated plan for largely underutilized and unprofitable activities such as a large dog park and large classrooms for "education". They spend a lot of money on furniture for instance. Pretty much any other group would not need the resources the State claims is needed to let's say house extra adoption animals, or provide a chronic care sanctuary for special needs animals. Again, the bid is being steered to HHS for \$0.

Claims that the lease would need to be long to encourage building on the property are not exactly correct. The State retained a provision that they could take back quarantine land at anytime they wanted basically. The said if the state "needed" the land. That could be due to an increase in quarantine stays, a funding shortfall, or they wanted to give more land to whoever (DLNR for a base yard, the military for their subsidized quarantine program for service members, etc.)

HHS makes \$5 million a year, has \$7 million in it's investment portfolio, has large yearly donations into perpetuity from the Jack Lord estate and Barbara Cox Anthony legacy, as well as hundreds of acres left to them by Pinky Thompson left undeveloped and unutilized for decades, against the wishes of the family who sued to have the land utilized. Lastly, HHS, to put it very, very mildly, is no friend to the animals, despite publicity and claims that would have one believe otherwise.

So, if the legislature has a charitable intent for HHS, it is a misguided one, and if they are singled out for special treatment by the Lingle Administration it would be grossly unfair to the above mentioned groups. Animal CARE Foundation will pay more, and is a more professional organization, and will produce a better facility, and better use the facility, than HHS would.

However, if the Senate insists on passing something, then at least consider opening the bids to for profit companies, or dividing the land up into one acre parcels so that less wealthy and smaller groups may qualify to bid on the property. But please understand that there is no requirement anywhere that I'm aware of that will require the Lingle Administration to rebid this land lease. After this bill is passed, and correct me if I am mistaken, but it appears that they can go right back to HHS and sign a 100 year lease for next to nothing. However, given HHS boardmembers' and HHS friends' donations to the Governor, and others, I do not hold out hope that whatever language you use will be honored by the Governor who seems bent on giving this land to HHS for nothing - even if it is rebid. Perhaps they will name the incinerator they will build on the property after the Governor to memorialize her tremendous contribution to their common cause.

Submitted By,

Frank De Giacomo, V.P.
Animal CARE Foundation

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testimony

From: amanda ferrer [mandaferrer@hotmail.com]
Sent: Wednesday, March 12, 2008 7:07 AM
To: testimony
Cc: Sen. Jill Tokuda
Subject: Testimony

TO: SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS, and SENATE COMMITTEE ON WAYS AND MEANS

HEARING DATE AND TIME: 03-13-08 at 2:45 pm

RE: OPPOSITION TO HB 3120, HD2 (HSCR772-08)RELATING TO ANIMAL QUARANTINE FACILITIES

You should let companies bid on the contract for your animal control problem. Euthanization is not the answer. This country has been euthanizing for many years and the problem and deaths of pets is increasing. A spay and neuter program is the only way to manage pet population. Let a no-kill organization have a chance. There should be no corporate welfare for criminal animal abusers.

Climb to the top of the charts! Play the word scramble challenge with star power. [Play now!](#)

testimony**LATE**

From: Kawehi Yim [kyim@hawaiianhumane.org]
Sent: Wednesday, March 12, 2008 5:15 PM
To: testimony
Subject: HB3120H.D.2 - RELATING TO ANIMAL QUARANTINE FACILITIES -- AHW

TO: Senator Jill Tokuda, Chair
 Committee on Agriculture and Hawaiian Affairs

FROM: Hawaiian Humane Society

SUBJECT: Testimony – HB3120HD2 – Relating to Animal Quarantine Facilities

Dear Chair Tokuda and Members of the Committee,

The Hawaiian Humane Society supports the intent of HB 3120, relating to animal quarantine facilities, however we do have concerns regarding the current language of the bill which states, “the property or facilities shall be leased or rented at a minimum of fifty per cent of fair market value”.

Our concern is based on the ambiguity of the language, “the property or facilities will be leased at fair market value”. In 2005, when the Hawaiian Humane Society submitted its proposal to use the 5.5 acre available parcel at the Halawa facility, an initial appraisal valued the land to be \$6.2 million. Clearly, this appraised value places this property far above what any non-profit would consider as a feasible venture.

Also, the inherent difference between for-profit and non-profit entities begs consideration by this legislative body. As a non-profit, charitable entity, the Hawaiian Humane Society is confined by fiscal limitations and relies heavily on the charitable dollars of individuals, foundations and trusts. We understand the State’s concern for achieving the best and highest use of this parcel, but we also feel that the community’s needs and benefits must be considered as you deliberate this important legislative issue.

For the past decade, we have seen the human population shift from the urban core of Honolulu to the outlying central and leeward regions. The Hawaiian Humane Society has actively pursued opportunities to serve these communities and use of the Halawa property would afford us the opportunity to better provide much-needed services to these areas by providing multi-use areas and educational programs that can benefit these communities. In addition to our core services and programs, the Society is working closely with interested parties to establish an equine veterinary clinic at the Halawa site – which would be the only one located on Oahu. Clearly, the benefits to the community are many.

We ask that you reconsider the language regarding the lease terms as stated in item (2)

“The property or facilities shall be leased or rented at a minimum of fifty per cent of fair market value;” and amend the language to “The property or facilities shall be leased at a reasonable lease rent to be determined by the Board of Agriculture, taking into consideration the amount and cost of improvements to be made by the lessee; whether the lessee is a not-for-profit or profit making organization; the benefit to the community; the length of the lease; and the financial viability of the lessee.”

The Hawaiian Humane Society feels that this language is fair and we urge this committee to give this amendment full consideration.

Respectfully submitted,

Kawehi Yim
Community Relations Director
Hawaiian Humane Society