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GOVERNOR OF HAWAII



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

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**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
FINANCE**

**Monday, April 6, 2009
3:00 PM
State Capitol, Conference Room 308**

**In consideration of
SENATE BILL 1345, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO AGRICULTURE**

Senate Bill 1345, Senate Draft 1, House Draft 1 provides for fair compensation, including an automatic lease extension, when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes. The Department of Land and Natural Resources (Department) opposes the proposed legislation because it has the potential to impede the State's flexibility to set-aside portions of leased lands for public purposes.

The State currently has approximately 97,859 acres encumbered by agriculture, pasture and/or dairy leases, as follows: 31 agriculture & pasture leases; 20 agriculture & residence leases; 7 agriculture only leases; 3 dairy leases; 13 diversified agriculture leases; 17 intensive agriculture leases; and 63 pasture leases. The safeguards and terms for leasing public lands are codified in Chapter 171, Hawaii Revised Statutes (HRS), to ensure transparency and fairness in the disposition of State assets and most importantly to guaranty that State land resources will be available when needed to meet the greater public safety and other public needs of all of Hawaii's residents. While providing limited preferential terms for the disposition of public lands for certain types of activities such as agriculture, renewable energy, government projects, industrial parks and utilities, etc., is well established in statute based on policy considerations, the State's right and responsibility to withdraw portions or all of the leased lands for a greater public purpose has never and should not be compromised. Any such withdrawal should and does require the State to compensate the lessee for the reasonable loss of vested rights under those affected leases. The Department's standard lease form contains a provision requiring the State to lower rents in proportion to the reduction in leased area and compensate the lessee for improvements made unusable in the process of taking leased lands for such purposes. Similarly, Hawaii law provides that:

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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
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"in the event of withdrawal of a portion [of land under lease], the board [of land and natural resources] may in its discretion allow a proportionate reduction in rent; and provided further that in the event buildings and improvements have been erected by the lessee, as permitted under the lease, on the land or portion thereof under lease affected by the cancellation or withdrawal, the board shall pay to the lessee a sum not to exceed the replacement value, less depreciation at the rates used for real property tax purposes."

To require the Department to pay the lessees' insurance costs and reasonable anticipated income less operating expenses on top of the existing remedies is unfair and unreasonable to any landowner including the State. The lessees have enjoyed the special benefits associated with the use of the public lands including in many instances very low rent that effectively constitutes a subsidy of certain agricultural activities. As stated above, the withdrawal provision was included in the State's standard lease provisions to ensure that any important or overriding public purpose arising after the disposition of public lands can be addressed in an appropriate manner by the withdrawal of any lands needed for such action. The proposed modifications to the withdrawal provision would deprive the State of its right to use public lands for legitimate and important public purposes.

With respect to the automatic lease extension component of the bill, existing law already authorizes the Board of Land and Natural Resources (Board) to grant lease extensions (aggregate of initial term and extension not to exceed 55 years), and make other modifications to the lease where the partial taking of leased land results in significant economic hardship to the lessee. Section 171-36, HRS, provides in part:

"(d) The board, from time to time, during the term of any agriculture, intensive agriculture, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may modify or eliminate any of the [restrictions] specified in subsection (a), extend or modify the fixed rental period of the lease, or extend the term of the lease upon a showing of significant economic hardship directly caused by: . . .

- (2) A taking of a portion of the area of the lease by government action by eminent domain, withdrawal, or conservation easement; provided that the portion taken shall not be less than ten per cent of the entire leased area unless otherwise approved by the board; and provided that the board determines that the lessee will not be adequately compensated pursuant to the lease provisions."

An automatic extension in statute would go against all the provisions for fairness in the leasing of state land in Chapter 171, HRS. When seeking public lands for private use, potential lessees are well aware of the benefits and drawbacks of leasing State lands as opposed to conducting their activities on private lands. First and foremost is the knowledge that those lands are public assets that must serve primarily the interests of the general public and the public trust purposes, and secondarily the needs of a private user. Automatic extensions provide an unfair benefit to the current lessee by depriving persons awaiting the published termination of the lease a fair opportunity to compete for the use of those lands at public auction. The bill would allow the taking of even a small portion of land, for example 100 square feet for a utility easement on a 1,000-acre lease, to automatically qualify for an extension. The Department believes no extension would be justified in such a situation and that the existing statutory provisions for

extensions are adequately broad enough to address the concerns raised by the proponents of this measure.

Passage of this bill in its current form would hinder the Board's ability to withdraw lands for any public purposes. Government agencies would be burdened with unknown project costs that will have to be paid by taxpayers.



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HOUSE COMMITTEE ON FINANCE

Monday April 6, 2009, 3:00 pm room 308

SB 1345 SD 1 HD 1 RELATING TO AGRICULTURE

Provides for fair compensation, including an automatic lease extension, when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.

Chair Oshiro and Members of the Committee:

My name is Alan Gottlieb, and I am the President of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly supports** SB 1345 SD1 HD1. As we have all watched the demise of many segments of the Hawaii livestock industry in recent years, including poultry, dairy and the struggling hog industry, Law and policy makers have been asking the beef cattle industry what we need to be sustainable. In response, in 2007, our industry worked together to create a Strategic Plan.

Overall, our industry's outlook is a positive one. The Hawaii Beef Cattle Industry has great opportunity for continued growth, which certainly works towards your mandates for bio-security for food production in Hawaii. However, our industry's condition is also fragile, especially if we begin to lose production on some of our large land tracts, many of which are leased from the State of Hawaii (DLNR, DOA and DHHL).

Actions, such as the removal of large portions of land from a state tenant, can cause serious financial losses as noted in this bill. Uncompensated losses to a farmer or rancher or any business can drive a marginal operator out of business, threatening not only that one business, but in the case of the Hawaii beef cattle industry, the entire industry itself. Allow me to explain:

Like the Hawaii dairy industry, our industry is dependent on a critical mass to help support its infrastructure (processing plants, transportation, marketing) and like dominos, key producers in our industry can quickly fall, if too much of our lands and productivity are lost. The small ranchers are especially susceptible, because without the big ranchers helping to support that infrastructure, everyone loses. Today there are 2 dairies in Hawaii which supply less than 10% of our locally consumed milk. Just 25 years ago there were 19 dairies supplying 100% of the locally consumed milk, plus ice cream production!

We also worry about the difficulty of finding financing in the future for ranchers who are on State lands, if lenders believe that the State can withdraw the lease or part of the lease at any time, without reimbursement for improvements and other monetary losses suffered by the tenant due to the removal.

We, The Hawaii Beef Cattle Industry, would like you to understand our issues today when our industry is strong and has continued potential, rather than to come back to you in several years to tell you we're all but done.

Thank you for giving me the opportunity to testify in favor of this very important issue.

UNIFIED AFFILIATE OF THE NATIONAL CATTLEMEN'S BEEF ASSOCIATION

Hawaii Cattlemen's Association • Kauai Cattlemen's Association • Maui Cattlemen's Association
Molokai Grazier's Association • Oahu Cattlemen's Association