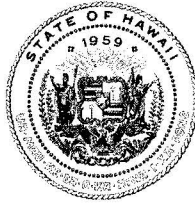
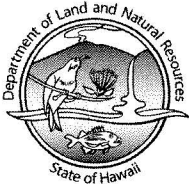


LINDA LINGLE
GOVERNOR OF HAWAII



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

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**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committees on
AGRICULTURE
and
WATER, LAND & OCEAN RESOURCES**

**Wednesday, March 25, 2009
9:00 AM
State Capitol, Conference Room 312**

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

Senate Bill 1345, Senate 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fair compensation, including an automatic lease extension, when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.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 Department's standard lease form already 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:

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 speculative income losses on top of the existing remedies could prove costly to the State. The Department characterizes the income losses under the bill as speculative because the bill provides no framework for evaluating

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

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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

such claimed losses. The bill merely states that Department compensate a lessee for "Loss of reasonably anticipated income associated with the withdrawn leased land." The phrase "reasonably anticipated" is vague. In establishing its losses under this language, could the lessee simply write a letter to the Department stating a dollar amount that the lessee "reasonably anticipated" losing as a result of the State's taking? Do the anticipated losses run for the duration of the lease term?

Further, the bill provides compensation for lost income as opposed to lost profits. A lessee should not be compensated for income without deducting the operating expenses required to generate that income. Finally on the compensation aspect of the bill, there is the potential for costly litigation resulting from a dispute between the State and a lessee over the calculation of losses resulting from the taking.

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. The law 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.

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, would automatically qualify the lessee for an extension. The Department believes no extension would be justified in such a situation. There should be at least a threshold of say – 40% or more.

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.

wooley1-Christopher

From: William and Anne Marie Jacintho [jacinthow001@hawaii.rr.com]
Sent: Sunday, March 22, 2009 10:51 PM
To: AGRtestimony
Subject: SB 1345 SD 1 Relating to Agriculture

William G Jacintho
Maui Cattlemen's Association
P. O. Box 473
Kula, Maui, Hawaii, 96790

HOUSE COMMITTEE ON AGRICULTURE
and
HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES

Wednesday March 25, 2009, 9:00 am room 312

SB 1345 SD 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.

Chairmen Tsuji and Ito and Members of the Committees:

My name is William G. Jacintho, and I am the President of the Maui Cattlemen's Association, and a fourth generation family ranch owner, on the island of Maui.

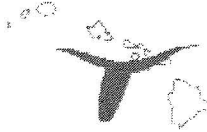
The Maui Cattlemen's Association, represents livestock producers from Maui, Molokai, and Lanai, and **strongly supports** SB 1345 SD1.

This bill provides for fair compensation, if the State removes part of a State lease, and it also provides for an automatic lease extension. **This bill has positive implications for every rancher State wide with a State lease!**

Future financing for ranchers who are on State lands, might be in jeopardy, 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.

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

William G. Jacintho



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HOUSE COMMITTEE ON AGRICULTURE &
HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES



Wednesday March 25, 2009, 9:00 am room 312

SB 1345 SD 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.

Chairmen Tsuji and Ito and Members of the Committees:

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. 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

**Farias Cattle Co.
2740 A Halaulani Rd.
Kilauea Hi 96754
808-651-6765**

HOUSE COMMITTEE ON AGRICULTURE
and
HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES

Wednesday March 25, 2009, 9:00 am room 312

SB 1345 SD 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.

Chairmen Tsuji and Ito and Members of the Committees:

My name is Bob Farias, and I am the owner and operator of Farias Cattle Co. on the island of Kauai.

We at Farias Cattle Co. **strongly supports** SB 1345 SD1.

We would like to remind you that the term and the structure of a lease is very important to the Banks to be able to loan money for start up and improvements. The cattle business is very strong but like any business plan needs long term plans to but successful and profitable.

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

Farias Cattle Co.
Kauai Cattlemen's Association President

Bob Farias
boballproperty@hawaii.rr.com

TESTIMONY OF:

JASON AND JERI MONIZ (K.K. RANCH)

BEFORE THE HOUSE COMMITTEES ON
WATER, LAND AND OCEAN RESOURCES
AND
AGRICULTURE

March 25, 2009

SENATE BILL NO. 1345
RELATING TO AGRICULTURE

Chairpersons Ito, Har, Tsuji, Wooley and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 1345. We strongly support Senate Bill 1345 and the amendments it make to HRS § 171. Our beef cattle ranch on the Big Island was one of several livestock operations that were subjected to significant economic damage having loss significant portions of our leases without compensation due to previous actions by the BLNR. In our case we had an easement place on our lease disallowing grazing on 33% of our lease in 2001 with ten years left on the lease. This action took place as a result of mitigation actions associated with the realignment of the Saddle Road. We received no compensation for loss of infrastructure, and production losses sustained resulting from a 30% reduction we had to make to our cattle herd. In addition we continue to have to pay insurance on the entire lease and land taxes for the entire lease. The lease rent has been reduced by the portion of the lease which we can no longer graze. This taking without compensation has caused losses to us each year since 2001 as each breeding cow left in the herd now has an increased fixed cost it has to carry that has resulted in marginal to negative returns to the entire operation each year.

We believe the amendments being proposed by SB 1345 would more fairly address condemnations, withdrawals, easements or other means of taking and allow the businesses on these leases to remain solvent.

Thank you for your concerns and assistance with these proposed changes to HRS § 171.