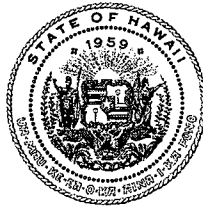
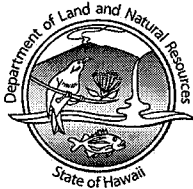


**SB 1345**

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committee on  
WAYS AND MEANS**

**Friday, February 27, 2009  
9:00 AM  
State Capitol, Conference Room 211**

**In consideration of  
SENATE BILL 1345  
RELATING TO AGRICULTURE**

Senate Bill 1345 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fair compensation, including an automatic lease extension, when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.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 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bill merely states that Department compensate a lessee for "Loss of reasonably anticipated income associated with the withdrawn leased land."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

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

RUSSELL Y. TSUJI  
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KEN C. KAWAHARA  
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

"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.

TESTIMONY OF:

JASON AND JERI MONIZ (K.K. RANCH)

BEFORE THE SENATE COMMITTEE ON  
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS  
February 27, 2009

SENATE BILL NO. 1345  
RELATING TO AGRICULTURE

Chairperson Mercado Kim 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. Several livestock operations have already been 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 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.

**From:** DiamondBRanchHI@aol.com  
**Sent:** Thursday, February 26, 2009 11:56 AM  
**To:** WAM Testimony  
**Subject:** (no subject)

DIAMOND B RANCH  
103 Maha Rd  
Makawao Maui Hi.96768

SENATE COMMITTEE ON WAYS & MEANS

Friday February 27, 2009 9 am Room 211

**SB 1345 RELATING TO AGRICULTURE**

Chairman Hee and Members of the Committee

My name is Brendan Balthazar I am the owner of Diamond B Ranch on Maui and a member of the Maui cattlemen's association. I strongly support SB 1345 . The land base on this state is only so big. As more and more houses are built and Agg . land is turned into subdivisions ,farms and ranches have less area to do business. Lot of times there are state lands that are leased out to be put into ranching because there was no other interest or useable use for the land. The rancher enters the property and spends a lot of money to put in the infrastructure , that is needed to make that unusable property a ranch. That money is usually borrowed . And hopefully paid back during the term of the lease. If the state is allowed to just come in and take a part or the whole property away with no compensation to the ranch, how is that money going to be paid back to the lender. Usually the entity that is wanting the property for a different use, and will pay the state more money , is seeing the land after the ranch removed weeds ,trees, put in fences, water, and improvements. Sure it is nice to just walk in after someone else cleaned the place up and not have to pay for anything. The ranch has to be responsible to the state to not contaminate there land and be a responsible tenant .So should the state be responsible to the ranch for any improvements, made to there property ,if it is taken away before the cost can be prorated over the term of the lease. Some ranches have the help of NRCS ,which require at least a 10 year lease. If the state takes away the property before the term the ranch will have to reimburse NRCS . No private leases are made that way . The property owners welcome the free improvements but the leases make them responsible for compensation if they sell or break

the lease before the term. This is fair business and it is usually practiced in the private sector. So why not leases with the state. I have a state lease that I invested \$250,000 . At the time of the lease I like most ranches needed the land and had no choice but to accept the terms of the state. Of course we felt that no one else would be able to do anything else with the property so we were safe. Not any more. Now we see companies wanting to put the property to uses that we never thought of. So the state can now say get out and loose not only the money you put in to the land, and the losses you will incur by having to quick sale your whole inventory, but all the potential revenue that you would have made . It will be harder to get loans to improve state property in the future if the lenders know that they is no accountability for early termination. When I look around I see no young people interested in ranching and I am sure the same is for farmers. They can't take the risks the we took or maybe I should say they won't ,because they are a lot smarter. We need to keep farms and ranches in the state. And a bill like SB 1345 will help tremendously.

Thanks for the opportunity to testify in favor of this important Bill.

Brendan Balthazar

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SENATE COMMITTEE ON WAYS & MEANS

Friday February 27, 2009 9 am Room 211

**SB 1345 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.

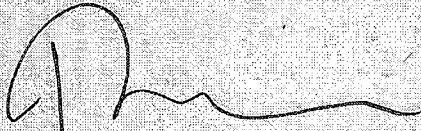
Chair Mercado Kim and Members of the Committee:

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

We **strongly support** SB 1345.

We are a third generation family ranch. Currently all three generations work on the ranch. We are not currently on State lands but are looking possibly expand. The ability the State has to take back leased land makes build outs and amortization on the ranch impossible. Strong terms are necessary to successful business. Now days bank loans and assistance money requires long set terms on land. Every business to be profitable needs stability and this bill will help bring this to the table for long term stable agriculture.

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



Bob Farias  
Farias Cattle Co.

*PALANI RANCH COMPANY, INC*  
3465 WAIALAE AVE 3260  
HONOLULU, HI 96816

February 25, 2009

SENATE COMMITTEE ON WAYS & MEANS  
Friday February 27, 2009 9 am Room 211  
**SB 1345 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 Mercado Kim and Members of the Committee:

My name is Jim Greenwell, and I am the President of Palani Ranch Company in Kona and a Past President of the Hawaii Cattlemen's Council.

We **strongly support** SB 1345.

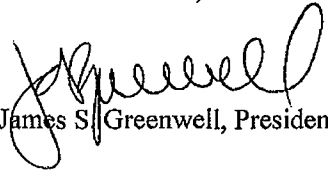
Many beef producers in the State today operate solely or largely on leased lands. They are increasingly concerned with the issue of a Lessor having unilateral withdrawal rights without at least providing some offsetting consideration. This bill would significantly and, we believe, effectively address that issue.

We also feel that more of an effort needs to be made to provide incentives in State leases for the lessee to make substantive improvements to leased land including compensation in the event of an untimely withdrawal.. Again this bill addresses that issue by providing for compensation

Your support for SB 1345 would be a vote in support of preserving our cattle industry and our industry's effort to at least maintain the current grazing capacity in the State of Hawaii.

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

Sincerely,  
Palani Ranch Co., Inc



James S. Greenwell, President



**kim2 - Arline**

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**From:** Keoki Wood [kwood@parkerranch.com]  
**Sent:** Thursday, February 26, 2009 2:24 PM  
**To:** WAM Testimony  
**Cc:** Alan Gottlieb  
**Subject:** SB 1345 2009

*George Wood  
Immediate Past President, Hawaii Cattlemen's Council  
P.O. Box 451  
Pauuilo, Hawaii 96776  
Ph 776-1224*

SENATE COMMITTEE ON WAYS & MEANS

Friday February 27, 2009 9 am Room 211

**SB 1345 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 Mercado Kim and Members of the Committee:

My name is George Wood and I am the Immediate Past President of Hawaii Cattlemen's Council.

We **strongly support** SB 1345.

The stability of the cattle industry in the state of Hawaii is the only success story for livestock production in our state. Many of the mid sized ranchers operate on state land and have requested lease extensions to meet financing obligations. If the state lands can be withdrawn without any compensation to the lessee I feel that this would greatly undermine the stability our industry has established. Furthermore it might put ranchers with loans tied to the terms of the lease in jeopardy of loosing their financing if lenders believe that the State can withdraw the lease or part of the lease at any time, without reimbursement for improvements.

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

# McCandless Ranch

February 25, 2009

## Senate Committee on Ways & Means

Friday February 27, 2009 9 am Room 211

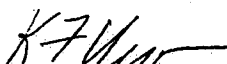
Re: SB 1345 Relating to Agriculture

Chairman Mercado Kim and Members of the Committee:

My name is Keith Unger and I am the manager of McCandless Ranch in South Kona on the Big Island of Hawaii.

As a matter of fair business practice and as a means to support Hawaii's cattle industry, I urge you to support SB 1345.

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

  
\_\_\_\_\_  
Keith F. Unger  
McCandless Ranch

2/25/09  
Date



## Hawaii Cattlemen's Council, Inc.

64-957 Mamalahoa Hwy

Kamuela HI 96743

Phone (808) 885-5599 • Fax (808) 887-1607

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### SENATE COMMITTEE ON WAYS & MEANS

Friday February 27, 2009 9 am Room 211

### SB 1345 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 Mercado Kim 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. 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