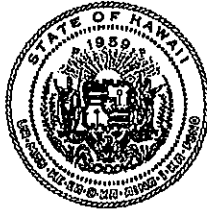
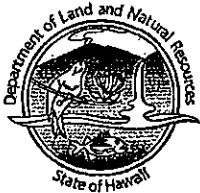


# **TESTIMONY**

**SB 50**

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 Committees on  
**WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**  
and  
**ENERGY AND ENVIRONMENT**

Friday, January 30, 2009  
2:45 PM  
State Capitol, Conference Room 229

In consideration of  
**SENATE BILL 50**  
**RELATING TO RENEWABLE ENERGY PRODUCERS**

Senate Bill 50 proposes to amend Section 171-95, Hawaii Revised Statutes (HRS), by requiring that (1) public notice be provided to other interested renewable energy producers, and (2) renewable energy producers provide pertinent information regarding the viability of their projects to the Board of Land and Natural Resources' (Board) for evaluation with assistance from the Department of Business, Economic Development and Tourism. The bill also requires that the Board's decision making process be documented in a report and prohibits the termination of an existing lease of public land in good standing for the purpose of issuing a lease to a renewable energy producer. **The Department of Land and Natural Resources (Department) supports most of the bill but has concerns regarding three, possibly four items.**

First, it is the Department's understanding that the bill as drafted continues to allow leases to renewable energy producers to be issued without public auction, subject to the additional conditions imposed by the bill. If the intent of the bill is otherwise, the Department requests that it be provided an opportunity to supplement its comments below.

The Department supports the inclusion of other interested renewable energy producers in the process for issuing a lease of public land and the required submission of the above information. The Department has pursued and promoted a policy of maximum transparency in its deliberations and the inclusion of all interested parties is an integral aspect of that policy.

The Department supports the requirement for the applicant's production of pertinent information in this bill as it is currently the Board's practice to obtain such information prior to acting on any lease disposition. The information provided by the renewable energy producers would assist the Board in making an informed decision regarding the disposition of limited state land resources in

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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  
KAIKOOLAWI ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

circumstances where multiple renewable energy producers are competing for the same public lands.

The Department recommends amendments to three portions of the bill:

1. Public Meetings. The bill adds the requirement of conducting two public hearings in the county where the public land to be leased for a renewable energy project is located. The Department supports a public meeting for the purpose of informing the public about renewable energy projects being proposed in their communities. However, two public meetings would add considerable time to the process and place an excessive financial burden on the State that it cannot afford under current budgetary conditions. Accordingly, the Department recommends changing amending the bill to require only one public meeting to be held and publicized as proscribed in the bill.

2. Leases. The Department is concerned about the disallowance of any lease that results from the termination of a lease in good standing. A general prohibition could have the unintended consequence of disallowing leases to renewable energy producers where pre-existing lessees are voluntarily seeking termination of a lease, in part or in whole, or engaging in discussions prior to the end of a lease for a term to begin after a lease expires, leaving land vacant and unproductive for potentially significant periods. The department's general lease form's standard terms and conditions does not allow for the involuntary termination of an existing lease in full compliance with its terms and conditions. Additionally, a lessee of state land who is not in compliance with the terms and conditions of the lease has 30 to 60 days after being notified of the breached lease condition to cure such breached condition. Accordingly, the lease provides each tenant contractual protection against early termination.

3. Subsequent Reports. The bill requires the Board to produce a report of its deliberations, stating the reasons for its decision. The Department opposes this requirement as being redundant and imposing an unnecessary burden on the Board. The Board's decision making processes are already subject to the stringent open meeting requirements of Chapter 92F, HRS. Under those guidelines, the Board's decision making process is already documented in the form of published minutes that are readily available to the general public.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of

**THEODORE E. LIU**

**Director**

**Department of Business, Economic Development, and Tourism**

before the

**COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

and

**COMMITTEE ON ENERGY AND ENVIRONMENT**

Friday, January 30, 2009

2:45 p.m.

State Capitol, Conference Room 229

in consideration of

**SB 50**

**RELATING TO RENEWABLE ENERGY PRODUCERS**

Chair Hee, Chair Gabbard, Vice Chair Tokuda, Vice Chair English, and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the intent of SB 50 to the extent the bill as drafted continues to allow the Board of Land and Natural Resources ("Board") to lease State lands to renewable energy producers without public auction but subject to the additional conditions. The Department, however, has two serious concerns regarding the bill in its current form which we believe will deter the development of renewable energy projects in Hawaii.

The Department supports the proper and fair balancing of public and private interests when the Board is considering the lease of State lands. We strongly believe that energy and food

security, two critical public policy interests expressed by the State's leadership, are and need to be complementary and synergistic. We believe this bill may strike that balance if it retains the Board's direct lease authority but imposes certain additional requirements thereto with respect to renewable energy developers. However, to the extent the intent of the bill is to require the Board to conduct a public auction when leasing State lands to renewable energy producers, DBEDT cannot support the bill with that requirement.

Senate Bill 50 proposes to amend Section Hawaii Revised Statutes (HRS) 171-95, by requiring the Board, in the context of a direct lease of State lands to a renewable energy producer, to (i) provide public notice of its intent to other interested renewable energy producers, and (ii) require the proposed lessee renewable energy producer to provide pertinent information regarding six additional criteria. These criteria include the submission of: 1. A project timeline; 2. Evidence of financial ability to complete the project; 3. A description of the conceptual design of the project; 4. A description of the project's business concept; 5. Documentation of the technical viability of the project; and 6. Evidence that the project is not wholly dependent upon acquiring state land.

The Department's first concern is with the sixth requirement, requiring a project to show that it is not exclusively dependent upon acquiring state land, would eliminate projects located in particularly resource-rich areas of State lands, such as the Kaheawa wind farm on Maui or ocean, hydropower, or geothermal projects. It is often the case that State lands are the most ideal, resource-rich lands for energy projects and this requirement may deter these from proceeding. This requirement may also place renewable energy developers at the discretion of private landowners who may have a different perspective than the State. We are concerned over this provision and recommend this requirement be amended.

The Department's second concern is the possibility of this amendment forcing renewable energy producers to take part in a public auction process. If the intent of the bill is to require a public auction, the Department cannot support it. As we understand it, this requirement is raised with the intent of making the selection process competitive and fair. We strongly believe that, on the contrary, it will have the deleterious effect of deterring, if not ceasing, renewable energy projects in Hawaii.

Requiring an auction process will raise the project costs for potential renewable energy providers. Faced with opportunities elsewhere, investments will not be made in the State. Furthermore, should a renewable energy project be selected, the higher costs will be passed on to the ratepayers or energy consumers. Hawaii energy costs are two to three times the costs of mainland states, and DBEDT is deeply concerned about unnecessarily increasing those costs. When the Senate passed the legislation that created HRS 171-95, a member of the Senate commented:

“In recent years, DLNR has received requests to lease public land for wind farms and other renewable energy projects. Their inability to secure a land lease during a project developments process has been cited by renewable energy producers as an impediment to development, and in some cases, developers have proceeded through the relatively lengthy and costly development process, only to be outbid for the land leases. This bill removes the uncertainty for renewable developers, thereby encouraging the development of renewable energy projects and reducing the State’s dependence on fossil fuels.”

We defer to the Department of Land and Natural Resources’ recommendation that only one (1) public meeting be required and publicized as proscribed in SB 50. The requirement of holding two (2) additional public hearings in the county where the project is to be located would add considerable time and expense. We note that the permitting and development of a renewable energy project in Hawaii is a long and involved process, which requires several public hearings and opportunities for public comment. For instance, the use of state lands triggers the Environmental Assessment (EA) process governed by HRS § 343-5. The EA process is lengthy and requires public comment. Furthermore, several state and county permits, including the Special Management Area (SMA) and Conservation District Use Permit (CDUP), already require a public hearing. Adding two additional hearings to the development process could unduly inhibit the development of good renewable energy projects in Hawaii.

The Department recommends implementing the first five (5) requirements as part of the current direct negotiation process. These criteria create a threshold through which only the most serious and substantive proposals will be considered by the BLNR. This codifies recent practice

in the collaboration between DLNR and DBEDT, whereby DBEDT is asked to assist in the analysis of proposed energy projects.

In conclusion, DBEDT believes the most effective method of achieving the public interest of energy independence while balancing food security is the process of direct negotiation, with the additional requirements discussed above.

Thank you for the opportunity to offer these comments.

We recommend SB 50 be amended to read as follows:

**"§171-95 Disposition to governments, governmental agencies, public utilities, and renewable energy producers. (a)**

Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction:

- (1) Sell public lands at [~~such~~] a price and on [~~such~~] other terms and conditions as the board may deem proper to governments, including the United States, city and county, counties, other governmental agencies authorized to hold lands in fee simple and public utilities;
- (2) Lease to the governments, agencies, public utilities, and renewable energy producers public lands for terms up to, but not in excess of, sixty-five years at [~~such~~] rental subject to the conditions set forth in section (d) and on [~~such~~] other terms and conditions as the board may determine;
- (3) Grant licenses and easements to the governments, agencies, public utilities, and renewable energy producers on [~~such~~] terms and conditions as the board

may determine for road, pipeline, utility,  
communication cable, and other rights-of-way;

- (4) Exchange public lands with the governments and agencies;
- (5) Execute quitclaim deeds to the governments and agencies, with or without consideration, releasing any claim to the property involved made upon disputed legal or equitable grounds, whenever the board in its discretion deems it beneficial to the State; and
- (6) Waive or modify building and other requirements and conditions contained in deeds, patents, sales agreements, or leases held by the governments and agencies whenever [~~such~~] the waiver or modification is beneficial to the State.

(b) In any disposition to public utilities under this section:

- (1) The sale price or lease rental shall be no less than the value determined in accordance with section 171-17(b); provided that [~~such~~] the sale price or lease rental may be on a nominal basis, if the board finds that [~~such~~] an easement is required in connection with a government project;
- (2) The board shall provide that in case the land ceases to be used at any future time for the use for which the disposition was made, the board shall have the right to



repurchase the land at the original sale price or fair market value, whichever is lower, and to purchase improvements thereon at the depreciated value or fair market value, whichever is lower;

- (3) Disposition shall not be made to any public utility if the utility has suitable lands of its own;
- (4) The disposition to public utilities shall be subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both, in any regular or special session next following the date of the disposition; and
- (5) For the purposes of this section, the definition of "public utility" as defined in section 269-1 is hereby incorporated herein by reference.

(c) For the purposes of this section, "renewable energy producer" means:

- (1) Any producer of electrical or thermal energy produced by wind, solar energy, hydropower, landfill gas, waste-to-energy, ocean thermal energy conversion, cold seawater, wave energy, biomass, including municipal solid waste, biofuels or fuels derived from organic sources, hydrogen fuels derived primarily from renewable energy, or fuel cells where the fuel is derived primarily from renewable sources that sell all of the net power produced from the demised premises to

an electric utility company regulated under chapter 269 or that sells all of the thermal energy it produces to customers of district cooling systems; provided that up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility or to district cooling system customers may be derived from fossil fuels; or

- (2) Any grower or producer of plant or animal materials used primarily for the production of biofuels or other fuels; provided that nothing herein is intended to prevent the waste product or byproduct of the plant or animal material grown or produced for the production of biofuel, other fuels, electrical energy, or thermal energy, from being used for other useful purposes.

(d) The board may lease or renew a lease of public lands to renewable energy producers pursuant to a public process that includes public notice under section 1-28.5 providing other interested renewable energy producers opportunity to participate in the process; provided that the renewable energy producer shall be required to submit as part of the proposal for the board's evaluation, as assisted by the department of business, economic development, and tourism, the following:

- (1) A timeline for completion of the project;
- (2) Evidence of the financial ability of the renewable energy producer to complete the project;

- (3) A description of the conceptual design of the project;
- (4) A description of the business concept for the project;  
and
- (5) Documentation on the technical viability of the  
project;

For the purpose of informing the public prior to the lease of public land or the renewal of a lease of public land for a proposed renewable energy project under this subsection, the department of land and natural resources shall conduct not less than **one** public hearing in the county where the public land to be leased for the proposed renewable energy project is located; provided that the notice of the hearing shall be published as provided in section 1-28.5. The board shall prepare and distribute an outline of the proposals for the renewable energy project and receive testimony from interested parties and the general public at each public hearing."

LINDA LINGLE  
Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON  
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS  
AND  
ENERGY AND ENVIRONMENT

Friday, January 30, 2009  
2:45 P.M.  
Conference Room 229

SENATE BILL NO. 50  
RELATING TO RENEWABLE ENERGY PRODUCERS

Chairpersons Hee and Gabbard and Members of the Committees:

Thank you for the opportunity to present testimony on Senate Bill No. 50 which seeks to amend Section 171-95 in order to create greater transparency and community participation in decisions about the leasing of state lands to renewable energy producers. The Hawaii Department of Agriculture supports the intent of this measure and offers comments.

World events have made it obvious that Hawaii is extremely vulnerable to disruptions in its food and energy supplies. Fortunately, the Governor and the Legislature are united in their belief that we must find a way to provide more locally produced food and fuel to Hawaii's people. Senate Bill No. 50 is an attempt to balance the use of Hawaii's precious lands and to reduce community fears of displacement and disruption.

This bill provides for an open process that allows for the fair evaluation of multiple energy producers interested in the same public lands for energy projects. We

agree that companies should provide adequate information to indicate the viability of the project and be held to a timeline so that valuable land does not sit idle for an unreasonably long time while precluding others from utilizing that land.

We also believe that encouraging renewable energy producers to seek private lands as well as public lands is desirable and agree that current lessees should not be terminated if they are in full compliance with their lease.

While this issue has caused much anxiety and turmoil for both ranchers and energy producers, we believe that a unique opportunity is before us to uncover where true synergy might lie between the two. HDOA is already assisting the cattle industry to meet with agencies to explain their vision, status and strategy plan that speaks to expansion of our food supply. We are willing to take that to the next level if parties are willing to come together, leaving their positions at the door, but bringing their knowledge to the table to explore how these two industries might mutually benefit by working together.



**Hawaii Cattlemen's Council, Inc.**

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SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS  
AND  
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

Friday January 30, 2009 2:45 pm Room 229

**SB 50 RELATING TO RENEWABLE ENERGY PRODUCERS**

Chairs Hee and Gabbard, 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 the intent of SB 50.** At a recent Hawaii Cattlemen's Council Board meeting our statewide delegates passed a resolution unanimously supporting this intent. This bill attempts to amend HRS Section 171-95 passed during an earlier legislative session, which allows the State to negotiate Direct leases with renewable energy producers, to help meet goals in the State's renewable energy mandates. However, if leases can be negotiated directly for lands already occupied by current long term lessees who are in good standing on their leases, for instance cattle ranchers, this constitutes assisting one industry at the possible detriment of another.

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). 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.

UNIFIED AFFILIATE OF THE NATIONAL CATTLEMEN'S BEEF ASSOCIATION  
Hawaii Cattlemen's Association • Kauai Cattlemen's Association • Maui Cattlemen's Association  
Molokai Graziere's Association • Oahu Cattlemen's Association

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, 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.

One of our key positions in our Strategic Plan is **"To work to preserve public grazing lands with a "no net loss of State grazing land" policy by restricting the leasing of public lands which have historically been used for grazing leases to only qualified ranchers and on lease terms appropriate to encourage responsible pasture use and management."** One reason for this policy is a critical mass issue **"Hawaii's cattle industry needs a core of larger producers to survive to preserve the necessary critical mass that benefits all producers and keeps the operation of the industry's infrastructure (transportation, packing houses, market opportunities, etc) viable.** We have recently realized that our policy terminology needed clarification and we have revised this to a policy of "no net loss in grazing productivity". We realize and appreciate that there are cases when co-use is possible and a win-win, but only if the land lost or shared is off-set with some increase in productivity on the remaining lands.

In recent months, several large pasture lessees on State owned land woke up to read in the morning paper that there would be a hearing the next day at DLNR possibly taking some or all of their leases away from them and using them instead for a bio-fuels project, via a direct lease arrangement. The newspaper stated that over 37,000 acres of land leased for pasture was up for grabs.

We understand from several of our members who are affected lease holders, that they had not even been contacted by DLNR that they may lose their leases for this project. The Article in the Honolulu Advertiser even stated "Producing diesel locally from biomass will cost more than diesel made from imported oil costs today, but SunFuels is banking on increasing oil prices to make locally produced diesel competitive in the year ahead." While we all probably agree that the recent fall in fuel prices is just temporary, are we ready to bet on the come to back this industry, while possible crippling another local food producing industry, beef cattle? The article goes on to say "we're developing a management plan that will allow trees and grazing at the same time." This type of co-use of the land has been tried many times before, and frankly generally does not work.

We were also told at the hearing that a biofuels tree project would not even have to do an environmental assessment for the change in use on State land from grass to trees. DLNR staff mentioned that trees and grass were basically the same use. We see it quite differently. Pasture is readily converted to farmland and vice versa. Are we to believe that a dense monoculture of eucalyptus can feasibly be converted to farmable land or pasture and vice versa?

SunFuels has since asked the DLNR to rescind its action on the 37,000 acres at Hamakua, but this does not mean we do not have to deal with the larger issues which the new Direct lease laws now allow, and that this bill attempts to correct.

Some of our members have asked why the State would take away lands from one viable industry to back one that has yet to prove itself in this State. They ask why anyone would plant more trees, when there are already tens of thousands of acres of trees on the Big Island, many of these past their scheduled harvest date for projects and still neither a value added nor energy

conversion plant in place. Taking lands out of pasture can be done quickly, but once they are planted in trees, especially eucalyptus trees, this is a long term commitment of at least 50 years before anything else could be done with the land.

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 terminate the lease or part of the lease at any time.

At a hearing in Hilo late last year, Senator's Hee, Kokubun and Takamine proposed the changes to Act 102 which is in front of you today as SB 50. How SB 50 will fare through the legislative process is uncertain; however we do know that if our industry loses large tracts of land without offsetting increases in productivity, it won't be long until we're back here, like the dairy industry to let you know that were all but out of business.

We can support co-use, if it is truly a win-win and not negotiated with a hammer over our heads. We strongly support co-uses with wind turbine projects where cattle can graze right under the windmills, or Photo-voltaic projects which use much smaller areas of land. Monty Richards at Kahua Ranch has been doing grazing under a wind farm for over 30 years. We are worried about a tree project where the cattle need to be fenced out for the first few years so they don't eat or stomp the seedlings, can possibly come in for grazing for a few years after that, but after which further grazing is impossible because grass doesn't grow under the canopy of the trees. A true win-win would mean that **if for example**, 20% of the land from some of these traditional pasture leases were removed and granted to others, that these others or the State helped provide compensation or offsetting benefits so that the remaining 80% of the land could be as productive as 100% of the land previously was. This can be done with improved infrastructure, such as cross fencing, pasture improvements or even irrigated pasture. Increasing carrying capacity per acre can be done, but usually costs more than the revenue from grazing alone can support. If biofuels in fact can generate that much more income, then it appears feasible and equitable that a condition of taking back a portion of a lease should include such an offset for the displaced tenant. We therefore ask that language be inserted into this bill which could provide for such compensation, or at least require the spirit of a true win-win co-use.

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



TESTIMONY OF: **NORMAN MEDEIROS AND FAMILY**  
**ALFRED NOBRIGA (ALFRED NOBRIGA ENTERPRISES)**  
**ERNEST, MARIAN AND STEVEN DEULUZ (DELUZ RANCH)**  
**WAYNE BOTEILHO AND FAMILY (BOTEILHO HAWAII ENT.**  
**AND CLOVERLEAF DAIRY)**  
**KERRY SCHUMAN (S.C. RANCH)**  
**JASON AND JERI MONIZ (K.K. RANCH)**  
**BAHMAN SADEGHI (ISLAND DAIRY)**

BEFORE  
THE SENATE COMMITTEE ON  
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS  
AND  
THE SENATE COMMITTEE ON ENERGY AND THE ENVIRONMENT

JANUARY 30, 2009

SENATE BILL 50 RELATING TO RENEWABLE ENERGY PRODUCERS

Chairperson Hee and Gabbard and Members of the Committees:

My name is **Jason Moniz** and I am testifying on the behalf of the livestock producers listed on this testimony. We **support** in principle Senate Bill 50 and request you consider some amendments we are offering. This testimony is being presented as a result of concerns we have for our agricultural businesses given the action taken by the BLNR in November 2008 to grant a lease in principle to Sunfuels Hawaii, State lands currently leased by or permitted to us for livestock production. **We believe Senate Bill 50 should clearly prevent the termination, or equivalent effect, of leases in agricultural production and in good standing, in favor of proposed renewable energy ventures.**

Collectively the potentially affected livestock operations produce 10% of the Big Island's beef cattle and 100% of the milk produced in the State. We fail to understand why one State mandate to produce renewable energy would potentially displace another for sustainable food production. Several of these livestock producers have personally been in the business for many decades where they have seen the effects of several wars and extended shipping stoppages and are very concerned over the inability of this State to produce its own food today.

It is our understanding that because of the tenuous state of the dairy industry, some of the lands initially requested for fuel production, that are currently in dairy production were removed from consideration for lease to Sunfuel's Hawaii by the BLNR. We also understand that Sunfuel's Hawaii has recently sent a letter to the BLNR requesting their granted lease in principle be rescinded. Nevertheless, we are concerned enough with this BLNR action and because several of us have already suffered significant economic damage to our agricultural businesses as a result of previous board actions resulting in the taking of significant portions of our leases without compensation, we request the following be considered as amendments to Senate Bill 50 or another bill if more appropriate:

We recommend that Senate Bill 50 include as an amendment to HRS §171-95 (d) (6) language that:

- not only prevents the termination of leases in compliance with lease terms, but also not allow the use of withdrawals and easements to prevent existing lessees from continuing their normal operations
- prevents the placement of new conditions on lessees in good standings that cause negative economic impact to the lessee

Thank you again for the opportunity to testify and for any assistance you can provide to help us keep our agricultural businesses solvent so that we, in turn, can continue in our efforts toward the revitalization of Hawaii's food production



# Sierra Club Hawai'i Chapter

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## SENATE COMMITTEE ON WATER, LAND, AGRICULTURE & HAWAIIAN AFFAIRS SENATE COMMITTEE ON ENERGY & ENVIRONMENT

January 30, 2009, 2:45 P.M.

(Testimony is 1 page long)

### TESTIMONY COMMENTING ON SB50

Chair Hee, Chair Gabbard, and members of the Committees:

The **Sierra Club, Hawai'i Chapter**, with 5500 dues paying members statewide, submits the following comments regarding SB50, which requires the Board of Land and Natural Resources to conduct public hearings prior to awarding a lease of public land to a renewable energy producer.

The Sierra Club does **not favor** unnecessarily restricting the development of renewable energy producers. Lines 12 to 15 on page 6 restrain the Board from being able to terminate an existing lease. This could be interpreted to include a month-to-month lease that, in any other circumstance, could be terminated freely. Public policy encourages the alienability of land, i.e., allowing the Board to have the ability to put a particular parcel of land to better use. Barring some other prevailing basis for this clause, the Sierra Club suggests removing this provision.

In general, the Sierra Club questions why renewable energy producers would be treated differently than other users of public land. To this end, any additional hurdles should be viewed with hesitation?

Due to the press of time, the Sierra Club is unable to provide any further comments at this moment but is willing to address this matter further should the opportunity be provided.

Thank you for the opportunity to testify.

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**From:** Michael Crosson [hamakuab@gmail.com]  
**Sent:** Wednesday, January 28, 2009 6:44 PM  
**To:** WTLTestimony  
**Cc:** Rep. Mark Nakashima  
**Subject:** HB 50

Dear Committee Members,

I **support** Senate Bill 50 and in particular the requirement to hold 2 meetings on the island where the lands are to be leased. Makes for more transparent inclusive government.

Mahalo,

**Michael Crosson**

**Individual**



January 29, 2009

**TO:** Senator Clayton Hee, Chair, and Members of the Committee on Water, Land, Agriculture, and Hawaiian Affairs  
Senator Mike Gabbard, Chair, and Members of the Committee on Energy and Environment

**RE:** Senate Bill 50, Relating to Renewable Energy Producers

As a company now exploring opportunities to develop a biomass-to-liquid synthetic diesel fuel production facility on the Big Island, requiring substantial lands for long-term feedstock supply, SunFuels Hawai'i LLC is pleased to comment on proposed amendments to Section §171-95.

Broadly, we are in support of many of the amendments proposed in this bill. We acknowledge and fully support the need for greater public notice and comment on proposed renewable energy projects. We also support language affirming that no lease to a renewable energy producer under this section shall cause termination of a lease for public lands held by an existing lessee. As you may know, we registered our strong support for these principles in a letter dated January 21, 2009 to the chair and members of the Board of Land and Natural Resources.

Two new requirements proposed in SB50 are of concern to us, however. Subsection (d)(2) requires "evidence of the financial ability to complete the project." We understand that the state has a legitimate interest in awarding leases that lead to productive outcomes. However, a key premise of §171-95 is that direct negotiations between energy producers and the Land Board will facilitate obtaining lands for biomass production – an essential first step for many projects – and subsequent capital formation and lending support for projects to move forward. Creating an absolute standard for proof of financial ability *before* lands can be assembled for biofuel projects may prove to be a cumbersome task and/or a deal breaker altogether. We encourage your committees to amend this section as follows: "Description of financial plan for project start-up." This would provide DLNR with a means to track projects and reassess their viability without imposing an unrealistic standard for renewable energy enterprises.

Additionally, we ask that your committees amend Subsection (d)(6) to read as follows: "Description of landscape and acreage requirements, to include public and private lands." Here again, a simpler, less cumbersome standard is preferable. Negotiations for private lands may take considerable time or may ensue after public lands are obtained. There is no compelling state interest in requiring energy producers to secure private lands any more, or less, than public lands. For purposes of appraising and understanding the scalable intent of an energy production project, a description should suffice.

With adoption of these recommendations, we support SB50 and thank your committees for the opportunity to provide comment.

Sincerely,

A handwritten signature in black ink, appearing to read "John Ray".

John Ray, General Manager  
SunFuels Hawaii LLC

---

**From:** don.b@tfp-hi.com  
**Sent:** Thursday, January 29, 2009 11:06 AM  
**To:** WTLTestimony  
**Subject:** SB 50

Senator Hee, Chair , committee on Water, Land, Agriculture, and Hawaiian Affairs

Senator Gabbard, Committee on Energy and Environment

Senators,

As an applicant for a lease for producing renewable biomass on 'State land , thank you for the opportunity to comment on SB 50 and thank you for your attention to the deficiencies in the original Act which have concerned both people directly affected by the Act and concerned citizens. I support SB 50 as an important step for open government. I have three comments

1) Open government is good for all of us. Endless process is not. I have twice been through State processes that have taken years to resolve what could have been done in months. I propose a realistic time limitation for the BLNR to work its process, conduct its hearings and render a decision. I believe without stringent time limitations the intent of the original Act to facilitate moving toward a renewable energy future could be defeated

2) The definition of Renewable Energy in c (1) could be read to exclude transportation fuel producers, true co-gens who sell heat or steam, and industrial energy producers who also sell to the grid. Again, I do not believe it was the intention of the legislature to create these unhelpful limitations. Clearly both electricity and transportation fuel are significant issues. Co-gens should not be discouraged as they are an important route to energy efficiency

3) While it is a very good idea to require a demonstration of financial capability and commitment, few energy facilities can show full funding at inception. Indeed there is a chicken and egg quandry, In our experience, financial institutions funding renewable energy usually ask, as the first question, whether fuel is fully secured. I would propose a less stringent standard at the outset coupled with milestones for achievement

Thank you for considering my ideas

Don Bryan

President and CEO

Tradewinds Forest Products

**From:** Linda Hayes [bhayes@hawaiiantel.net]  
**Sent:** Thursday, January 29, 2009 8:11 AM  
**To:** WTLTestimony  
**Subject:** Senate Bill 50

Support  
Individual

To Whom it may Concern,  
It is vital that the

Board of Land and Natural Resources be required to not only conduct public hearings about leases of state land to renewable energy producers, but that the hearings be held at times and places convenient to those who live in the areas that will be affected. Also, the input of those living in the affected areas must be really considered and listened to. The DLNR recently had a meeting in Honokaa about leases only after much urging by our County officials, and made it clear that they were there only as a courtesy and didn't need to be there to tell us about plans that will affect our quality of life.

They also made it clear that the decision about leases is theirs and theirs alone, despite what we the community want. Not only should the DLNR be required to have local, public meetings, most importantly, the law giving them sole power in making the decisions about granting leases needs to be revoked as soon as possible. The DLNR has NO right to make decisions that will impact our lives and land for years to come without input from the community and County. Planting eucalyptus to burn for energy is a poor choice in the face of so many other alternatives, and OUR community's and OUR County's land shouldn't be ruined.

I strongly urge you to not only require local, public hearings, but to revoke the power of the DLNR to make lease decisions on their own. These decisions must be made on a local, county decision. Thank you for your consideration,

Sincerely,

Linda J.  
Hayes  
44-4688  
Waikaalulu Road  
Honokaa, Hawaii 96727



Mitchell Evans  
Friends of Hamakua  
Support

Senators:

Thank you for the opportunity to testify before this committee and for your efforts in finding a path to the equitable allocation of public lands. Thank you also for ensuring DLNR decisions effecting Hamakua land use pertaining to renewable energy are made only after public hearing on the effected island. This is as it should be.

As the Friends of Hamakua reviews SB50 in its present form, we note that SB50 does not in any meaningful way impact the process or content of those deliberations. In effect, DLNR remains empowered to decide whether to award such a lease on Hamakua lands at its own discretion and based solely on internal criteria.

- If DLNR believes a particular project offers a viable business proposition to the state, it may award at will.
- There is no competitive process to ensure the proposal best suited to the purposes of the state and the benefit of the local inhabitants of the district in place.
- No formal criteria for selecting the most beneficial biofuels feedstock production are established.
- No measurements ensure successful implementation over time.



- No mechanism for determining the efficacy of monocrop eucalyptus production over mixed species production is defined.
- No determination as to the highest and best use of public lands in the breadbasket of Hawaii is considered. The Friends of Hamakua believe the foremost consideration must be the protection of lands with agricultural potential as well as maintaining biodiversity for which Hawaii is famous. Neither of these goals is reached by planting vast tracts of monocrops solely for burning.

Gentlemen, it does no good simply to require the decision be made after several visits to the Big Island. This bill leaves the process, the criteria and the decision in the back rooms, vulnerable to embedded special interests and political expediency.

SB50 should require that a formal Request for Proposal process be utilized to determine the party to whom such a lease should be awarded. Using the RFP process, a common standard in use around the country, the state will be able to share the creation of criteria among more than a single agency. This will also ensure the Hawaii Department of Energy plays the appropriate role in what is more than a simple land use decision. The state could allow for multiple entities to provide input to developing the criteria, would require publishing that criteria in a timely manner to allow the competitors to tailor proposals to the benefit of the citizens of Hawaii and enable an award that will more precisely ensure renewable energy production in keeping with the interests of all the citizens of the Big Island and the state.

From:  
Sent: Thursday, January 29, 2009 11:10 AM  
To: WTLTestimony  
Cc: Rep. Mark Nakashima; dyagong@co.hawaii.hi.us; senatorinouye@inouye.senate.gov  
Subject: Senate Bill 50

Support  
Individual

To Whom It May Concern,

It is essential that

the Senate require the DLNR to hold public hearings before leasing any public land to a renewable producer and also these meetings should be held in the areas that are going to be affected by such leased land.

In the case of land lease use for biomass on the Big Island, the DLNR had held one informational meeting in Honokaa. They have indicated the decision about leases is theirs alone. This is wrong, the community

affected by the leases must be able to make the decision.

The DLNR

clearly does not understand the environmental impact of planting, and then harvesting eucalyptus trees on the Hamakua coast. There are many more environmentally friendly sources of power available. Solar and wind can be used, despite what was said at the meeting about the source being inconsistent. Solar power can be stored in battery banks, making it a firm power source, as can wind power. I live off grid on a solar system in a fully functional, modern home with all of the amenities and have had no problem with power for the last 19 years. If I as an individual can live on a solar system, HELCO and the state can surely partner together to harness sun and wind for the Island.

Individuals on the grid can sell their excess power back to HELCO.

We also have a huge resource available in the form of geothermal. They have stated they already have the ability to supply much more power to the grid than they are currently doing.

Finally, in her State of the State address, Governor Lingle has stated we need to do a much better job of raising our own food locally. Why not use these state lands for food production instead of growing trees to burn for energy, we have other energy sources available to us.

Please allow the counties

and communities affected by state land leases to have a say in the use of land where we live, it seems the DLNR is out to make money by accepting the proposals of the first companies that come along. The DLNR is not qualified to make a decision that will affect a community for them, the people who live in that community need to make it. An environmental study needs to be completed even though the land is designated agriculture. I've seen firsthand the effects of runoff into the ocean from any large scale work no matter how far up the slopes of Mauna Kea. As a retired Hawaiian pilot and a private pilot I've seen the ocean turn brown for days below work sites from ranging from sugar cane to the tree planting on Bishop Estate lands as they've cut access roads, etc.

The DLNR must hold local

public meetings, AND must listen and abide by the wishes of the affected community.

Sincerely,

William C. Hayes

44-4688 Waikaalulu

Road

Honokaa, Hawaii 96727

---

**From:** mak221@aol.com  
**Sent:** Thursday, January 29, 2009 11:20 AM  
**To:** WTLTestimony  
**Subject:** SB 50

individual

To the Appropriate Legislators,

I am writing to testify in favor of Senator Takamine's bill, SB50, regarding the awarding of leases by BNL. As a resident of the Hamakua Coast, I and my o'hana are very disturbed by mostly mainland companies being awarded contracts that will affect our aina for many years to come, without our being able to give our input. We are all in favor of renewable energy, but we must have an opportunity to make sure the development is responsible and in line with the needs of the Community.

Senator Takamine's bill addresses these problems and I strongly support it.

Mahalo

Mark A. Koppel

Umauma

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Which stars will make the biggest headlines in 2009? [Get Hollywood news, celebrity photos and more with the PopEater Toolbar.](#)



individual

Testimony in favor of SB50

TO: WTL: Senate Water, Land, Agriculture, and Hawaiian Affairs Committee  
Senator Clayton Hee, Chair  
Senator Jill Tokuda, Vice Chair

DATE: January 29, 2009  
Conference Room 229  
2:45 p.m.

RE: Testimony in favor of SB50 Relating to Renewable Energy

Aloha Chair Hee, Vice Chair Tokuda and Members of the Committee:

My name is Albert E. Beeman of Hilo and I own a farm in Hakalau on the Hamakua Coast on the Big Island.

I wish to testify in favor of SB50.

No one is more in favor of renewable energy, fossil fuel independence, and long term sustainability than I am. But after closely watching the process currently going on on the Hamakua Coast over the use of the Bishop Estate timber amongst Helco, several potential renewable energy producers and the State it is very clear that what is allowed under the current law is heavily flawed and could easily result in:

- Selection of pretty much any “so called” renewable energy producer as a State land lessor or purchaser for any reason whatsoever without public participation and input into the process
- Total disregard of wishes of the community that must live with decisions made
- Degradation of our quality of life whether willful or inadvertent
- No way for the community to set expectations without understanding of project timelines
- No transparent assessment of the financial viability of the participants while the local community would be left with the mess if the project goes bankrupt
- No public review of the business concept, the technical viability or information to determine if the choice is “best of breed” or better than other technologies or even worth doing at all
- No public explanation as to why use of our public land is the best alternative
- No public report on what decision was made with the substantiating rationale

I am also worried that without this legislation it remains possible, without public awareness, for a renewable energy producer to kick a law abiding lessor off their lease when they are currently in compliance with the terms of their lease.

Our migration to energy independence and our ability to reduce global warming has a far greater chance of success if we involve the communities that must bear the burden of the changes we all must make to reach our sustainability goals.

On the other hand nothing will degrade our chances of sustainability success like making opaque decisions that turn out to be wrong or perceived deceptions that result in getting sideways with the communities affected!

In our rush to free ourselves of our fossil fuel dependence and our desire to save our planet there are bound to be decisions made that will turn out to be less than the best or down right wrong. Especially when dealing with new or leading edge technologies, unfortunate decisions are inevitable so it is imperative that the public is well informed, allowed to provide input and has some "skin in the game."

I respectfully urge the Committee to approve this needed measure.

Mahalo for your valuable time.

Me ka pono (Respectfully submitted),

Al Beeman  
Hilo

**D. NOELANI KALIPI**  
DIRECTOR, GOVERNMENT & COMMUNITY RELATIONS  
**FIRST WIND ENERGY, LLC**

TESTIMONY IN OPPOSITION TO S.B. 50  
BEFORE THE  
SENATE  
COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS  
AND  
COMMITTEE ON ENERGY AND ENVIRONMENT  
ON  
FRIDAY, JANUARY 28, 2009  
2:00 P.M. CONFERENCE ROOM 229

Aloha Chairman Hee, Chairman Gabbard, Vice Chair Tokuda, Vice Chair English, and other esteemed Members of the Committees on Water, Land, Agriculture, and Hawaiian Affairs, and Energy and Environment.

My name is D. Noelani Kalipi and I am the Director of Government & Community Relations for First Wind. First Wind understands the intent of this legislation, and supports transparency in the leasing of public lands for renewable energy projects. However, we have strong concerns about several provisions in this bill that would have adverse and direct impacts on our projects located on State Conservation lands. **While we look forward to the opportunity to work with the Members and Staff of these committees to address these concerns as the bill moves forward in the legislative process, we oppose the bill as drafted.**

First Wind, through its affiliates Hawaii Wind (formerly known as UPC Hawaii Wind) and Hawaii Holdings, has been working in Hawaii since 2004 with a Maui-based firm, Makani Nui Associates. Together, we developed, constructed, and operate Kaheawa Wind Power, a 30MW facility located in the West Maui Mountains. Kaheawa is located on State conservation lands, a fact that we are very proud of, given the rigorous permitting requirements associated with doing any type of activity on conservation lands. These permitting requirements provide for numerous opportunities for public input and comment as well as review by the Board of Land and Natural Resources (BLNR) in public meetings.

We are proud of our demonstrated environmental record in Hawaii, which includes the precedent of, we believe, being the first operating wind farm in the United States to establish a Habitat Conservation Plan, which required joint jurisdiction between the State of Hawaii's Division of Forestry and Wildlife and the U.S. Department of Fish and Wildlife. The HCP is designed to minimize the incidental injury or death of four federally listed species that may occur when these species fly in the vicinity of the project. At KWP, we have 4 employees, including two full-time biologists and two wildlife technicians, whose focus is the successful implementation and execution of the HCP.

We also have a native plant replanting program at Kaheawa. There is a dryland native plant forest near the higher elevation turbines. Prior to construction, we took seeds from the native plants (none of which are endangered native plants) and propagated those seeds at a nursery in Haiku. Following construction we began replanting these native plants in areas that had been disturbed by construction. We also use Kaheawa Wind Power as an educational tool for students – there is much to learn about Kaheawa from the mo`olelo of the site and the cultural significance of wind to Hawaii's indigenous peoples to the science and engineering that drives wind energy. We pride ourselves in working closely with the Maui community as we continue to discuss the positive impacts of clean, renewable energy to Maui's sustainable future.

A significant amount of capital is required early in the development of wind projects. Annual average wind speed, available land with proximity to transmission lines, site access, community acceptance, and environmental considerations are all critical elements to the development of a wind energy project. All aspects of developing the wind farm are driven by its location. For that reason, it is necessary to identify the location of the wind farm at the beginning of the process, and to secure the rights to utilize the land once all of the necessary studies, permissions, permits, public reviews and other entitlements are completed. It is cost prohibitive and extremely unlikely that any company will begin development and permitting of a project area without assurances that the land identified for the development of the project will be available.

For that reason, First Wind, in September 2006, applied for and received a “directed lease” from the Department of Land and Natural Resources to begin development efforts to construct Kaheawa Wind Power II, directly adjacent to the existing site. The “directed lease” authorizes the Land Division in DLNR to engage in negotiation of lease provisions but states that execution of the final lease cannot occur until First Wind, at a minimum, has complied with the CH 343 process, been granted its Conservation District Use Permit by the Board of Land and Natural Resources.

Since that time we have been engaged in a number of studies to determine the feasibility of building the project including archaeological studies, botanical studies, wind resources studies, engineering studies, noise studies, and a variety of avian studies. We also purchased 14 wind turbine generators. We were delayed in the development of the project due to prolonged negotiations with the utility resulting in our wind turbine generators being delivered to Maui close to a year prior to our proposed construction date. The equipment is currently being stored on Maui.

We are heavily engaged in the permitting process. We published an Environmental Impact Statement Preparation Notice in December 2007 and we will be submitting our Draft Environmental Impact Statement (EIS) to DLNR within the next week. We are also engaged in discussions with the requisite State and Federal agencies regarding a Habitat Conservation Plan for Kaheawa II. We anticipate filing a Conservation District Use Application (CDUA) in the near future. The EIS and CDUA have public processes that allow for public comment and input and all three permits require action by the BLNR, thus requiring public notice when the Board's consideration of each permit is placed on the Board's agenda.

S.B. 50, as drafted, would require First Wind, after it has spent several million dollars on requisite studies, permitting, and the purchase of wind turbines, and several public processes, to engage in an additional process “that provides [notice to] other interested renewable energy providers to participate in the process” in order to secure its lease. If the intent of the legislation is to provide notice, this requirement is already met under the current process where the Board of Land and Natural Resources (BLNR)’s meeting agenda is published in advance of the meeting with supporting documents. Additionally the opportunity to provide comment during the Board’s consideration of the request is afforded to anyone in attendance at the meeting.

**Given the stringent requirements of developing a renewable energy project on State Conservation lands with the number of permits required and the numerous opportunities for public input and consultation associated with each of the requisite permits, First Wind respectfully requests that a provision be inserted into S.B. 50 which would exempt leases of conservation lands to renewable energy developers from the processes outlined in S.B. 50 as public notice and opportunity to comment is already provided for under current statutes and regulatory provisions.**

S.B. 50, as drafted, also requires the renewable energy developer to “provide evidence that the renewable energy producer has relied upon securing private land to the fullest extent reasonable under the circumstances and that the project is not exclusively dependent on acquiring state land.” Unlike some other forms of renewable energy, a wind farm can only be developed where the wind resource is sufficient to sustain a utility-scale facility. This is location specific and cannot be determined by land ownership. In the case of Kaheawa, the strongest wind resource on Maui, according to wind maps is on the Kaheawa ridge which is entirely located on State conservation land. **First Wind respectfully requests that this provision be deleted from the bill.**

Again, we understand and support the need for transparency as renewable energy projects are developed in Hawaii. We continuously try to provide for as much transparency as possible in the way our projects are developed. We respectfully request that the committees consider our request for amended language. We welcome any opportunity to discuss this further with the Members and Staff of this committee.





Warren Watanabe

2343 Rose Street, Honolulu, HI 96819  
Phone: (808) 848-2074; Neighbor Islands: 1-800-482-1272  
Fax: (808) 848-1921; e-mail: info@hfbf.org

Bill: SB50 - Hearing Date: Jan. 30, 2009 @ 2:45 PM Committee WTL-ENE Conference room 229

Senator Clayton Hee;  
Committee on Water, Land, Agriculture and Hawaiian Affairs

Chair Hee & Members of the Committee,

The Hawaii Farm Bureau Federation is the largest general agriculture organization in the State of Hawaii with over 1600 members Statewide and we "Support SB50 with amendments. Our members our directly affected by Act 102 & HRS 171-95; of which the unintended outcome is now jeopardizing some of our most productive land, we respectfully request your support to correct this situation as these policies have created a competition between food production & fuel production.

The Hawaii Farm Bureau Federation will not trade food production for fuel production. There must be an equitable policy implemented to allow food production the freedom to grow & prosper without constant competition for their land. Livestock production in particular takes a critical mass, if we lose our core producers we lose that critical mass; the land involved in the Sun Fuels Hawaii issue is clearly a critical mass. We have watched our dairy & poultry farms evaporate! The State of Hawaii controls the only affordable source for agriculturally productive land. The State should not continue to use the word sustainable in reference to agriculture if it does not intend to back up those words with actions; if you want agriculture sustainability then it must be supported at all levels of government. Every producer you take out erodes the sustainability of this industry.

Another area of concern is the potential for abuse of affordable agricultural lands for speculative purposes; although the State leases discourage speculative profit on the land the leases do not address the "Blue Sky" this grey area has the potential to be abused; it would be a tremendous waste to see State land and our polices being utilized by renewable energy companies for the potential profit these ventures may make on paper.

We respectfully ask that you consider the following amendments;

1. *Prevents the termination of leases in compliance with lease terms, but also shall not allow the use of withdrawals and easements to prevent existing lessees from continuing their normal operations.*
2. *Prevents the placement of new conditions on lessees in good standings that may cause a negative economic impact to the lessee.*
3. *Provides authority to the BLNR & HDOA to allow lessees in good standing to negotiate subleases that are in compliance with HRS §171-95 with renewable energy companies for co- use of pastoral and other agriculture leases, by where there is no net overall loss of food production in favor of the renewable energy production*
4. *Provide clear & strong language that deters renewable energy companies from using State Land for speculative or venture capital purposes.*

Thank you for the opportunity to testify on this issue.



**HAWAII FOREST INDUSTRY ASSOCIATION**

P. O. Box 5594 ❖ Kailua-Kona, HI 96745-5594

Phone: 808-933-9411

Email: [hawaii.forest@hawaiiantel.net](mailto:hawaii.forest@hawaiiantel.net)

Website: [www.hawaiiforest.org](http://www.hawaiiforest.org)

**Heather Gallo**

*Executive Director*  
January 29, 2009

**TESTIMONY ON THE RENEWABLE ENERGY PRODUCER PROVISIONS OF SECTION 171-95,  
HAWAII REVISED STATUTES (HRS)**

Dear Senator Clayton Hee, Chair and Senator Jill N. Tokuda, Vice Chair, Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs and Senator Mike Gabbard, Chair and Senator J. Kalani English, Vice Chair, Senate Committee on Energy and Environment,

Thank you for the opportunity for the Hawaii Forest Industry Association (HFIA) to provide testimony in support of S.B. 50 with consideration of two amendments to the proposed legislation.

HFIA supports the Department of Land and Natural Resource's (DLNR) efforts to support renewable energy producers as a way to create a more sustainable, energy-secure and environmentally sound future for Hawaii. As an organization that promotes a balance of forest land uses and sound management practices for all of Hawaii's forests, we recognize the importance of the forestry industry's ability to contribute to energy production via biomass/biofuels.

In the past, we supported the Board of Land and Natural Resource's (BLNR) offering of land licenses through a competitive "Request for Proposal" process. This has allowed the BLNR to weigh the various values that the land can produce including revenue, environment, job creation and now, as a source of renewable energy. We have not supported the State's interest to replace this process with one which grants a license to the first applicant in line.

In the last legislative session, BLNR was granted the authority to enter into direct negotiations for leases with entities whose propose is to grow crops for biomass. This allows the BLNR to dedicate large blocks of land for a single use on a no-bid basis which includes renewable energy. While HFIA strongly promotes the development of renewable energy sources, we also find it prudent to require a fair and equitable process in granting these long-term leases.

With these concerns in mind, the HFIA supports S.B. 50 which requires the BLNR to conduct no less than two public hearings in the county where the public land to be leased for the proposed renewable energy project is located and that the notice of the hearing be published. We also support the requirement of BLNR to prepare and distribute an outline of the proposals for the renewable energy project and receive testimony from interested parties and the general public at each public hearing.

In addition, HFIA also urges consideration of two amendments to S.B. 50. We request that in addition to the requirement of conducting public hearings that there be a limitation on the length of time

that the BLNR has to act and conduct its hearings. If not included, there could be a considerable amount of time lost before the hearing is conducted, which could negatively impact the renewable energy producer and the community.

We also request that under subsection c-1 transportation fuels be included where an energy producer would be allowed to not only produce renewable energy, but also fuel its own operation.

HPIA is a non-profit Hawaii organization, incorporated in 1989, which promotes a balance of forest land uses and sound management practices for all of Hawaii's forests. Our industry generates over \$35 million in business for the State, through the products and services of approximately 250 member companies and individuals. We have worked closely with the Division of Forestry and Wildlife (DOFAW) and the DLNR over the past 15 years to promote, foster and develop industry standards, initiate forestry research and development, and promote quality control and industry integrity in the State of Hawaii.

Sincerely,

Heather Gallo, Executive Director  
Hawai'i Forest Industry Association





**Lorie Farrell**

P.O. Box 1630  
Kamuela, HI. 96743

Phone: 808-885-5580

Fax: 808-885-5582

E-mail: [bifb@hawaiiantel.net](mailto:bifb@hawaiiantel.net)

Bill: SB50

Hearing Date: Jan. 30, 2009 @ 2:45 PM

Committee WTL-ENE in conference room 229

Senator Clayton Hee;

Committee on Water, Land, Agriculture and Hawaiian Affairs

Chair Hee & Members of the Committee,

My name is Lorie Farrell; I am the executive director for the Big Island Farm Bureau. We are the largest general agriculture organization in the State of Hawaii & the Big Island; representing over 650 agricultural members/producers on the Island of Hawaii and we **"Support SB50 with amendments"**. We are unique in representing all agricultural commodities & utilize our diverse membership base to direct our policies. The Big Island Farm Bureau is comprised of the individual farm bureau chapters on the Big Island and we are directly related to the Hawaii Farm Bureau Federation and affiliated with the American Farm Bureau Federation.

Our members are being directly affected by Act 102 & HRS 171-95; of which the unintended outcome is now jeopardizing some of our most productive land; we respectfully request your support to correct this situation as these policies have created a competition between food production & fuel production.

The Hawaii Farm Bureau Federation will not trade food production for fuel production. There must be an equitable policy implemented to allow food production the freedom to grow & prosper without constant competition for their land. Livestock production in particular takes a critical mass, if we lose our core producers we lose that critical mass; the land involved in the Sun Fuels Hawaii issue is clearly a critical mass. We have watched our dairy & poultry farms evaporate! The State of Hawaii controls the only affordable source for agriculturally productive land. The State should not continue to use the word sustainable in reference to agriculture if it does not intend to back up those words with actions; if you want agriculture sustainability then it must be supported at all levels of government. Every producer you take out erodes the sustainability of this industry.

Another area of concern is the potential for abuse of affordable agricultural lands for speculative purposes; although the State leases discourage speculative profit on the land; the leases do not address the "Blue Sky" this grey area has the potential to be

abused. State leases may be transferred by board approval and address land & improvements they do not specifically address other areas such as these; although they are discouraged. It would be a tremendous waste to trade affordable land currently in food production for fuel production and then see that business venture sold to the highest bidder. What message will that send to Hawaii's agriculture producers?

We respectfully ask that you consider the following amendments;

1. *Prevents the termination of leases in compliance with lease terms, but also shall not allow the use of withdrawals and easements to prevent existing lessees from continuing their normal operations.*
2. *Prevents the placement of new conditions on lessees in good standings that may cause a negative economic impact to the lessee.*
3. *Provides authority to the BLNR & HDOA to allow lessees in good standing to negotiate subleases that are in compliance with HRS §171-95 with renewable energy companies for co-use of pastoral and other agriculture leases, by where there is no net overall loss of food production in favor of the renewable energy production*
4. *Provide clear & strong language that deters renewable energy companies from using State Land for speculative or venture capital purposes and prohibits "Blue Sky" profits.*

Please support our agricultural producers with actions that ensure the sustainability for our future generations.

*Respectfully,  
Lorie Farrell*

Lorie Farrell, Executive Director  
Big Island Farm Bureau

Guy Gilliland

Testimony of  
Hamakua Biomass Energy (HBE)

For  
COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

and

COMMITTEE ON ENERGY AND ENVIRONMENT

Friday, January 30, 2009

2:45 p.m.

State Capitol, Conference Room 229

in consideration of

SB 50

RELATING TO RENEWABLE ENERGY PRODUCERS

Chairman Hee, Chairman Gabbard, Vice Chair Tokuda, Vice Chair English, and Members of the Committees on Water, Land, Agriculture, and Hawaiian Affairs, and Energy and Environment, HBE appreciates the opportunity to provide written testimony to your committees regarding the above noted bill.

Within and during the forthcoming legislative process, HBE will participate and be available to provide Committee Members an overview and understanding of our renewable energy project and review areas of support and concern regarding the bill in its current form.

Position Regarding SB 50 and Refinement of Administrative Procedures

HBE does not take issue with the intent of SB 50 that allows the BLNR to continue direct leasing of public lands for renewable energy projects, so long as it does not affect currently approved direct lease negotiations with renewable energy producers. However, HBE respectfully recommends the committee members delete the requirement, as currently drafted in SB 50, that the Board to conduct a public auction when leasing State lands to renewable energy producer.

Furthermore, based on the historic legislative initiatives summarized in the following paragraphs, HBE suggests the existing laws allowing for direct negotiation of leases to renewable energy producers is not fundamentally flawed; instead, the legislature could require the DLNR and DEBDT to further refine their administrative procedures to ensure better implementation of this important facilitating legislation intended to progress the State's Renewable Portfolio Standard calling for 70 % clean energy by 2030.

By way of background, in 2008 the legislature took the initiative to pass Act 145 as part of a direct effort to reduce the State's dependence on petroleum for over 90% of the State's energy needs. Act 145 amended Chapter 205, Hawaii Revised Statutes, to include agricultural-energy facilities as a permitted use within the State Land Use Agricultural district. HBE's biomass energy generating facility qualifies

under Act 145 as an agricultural-energy facility. The legislature passed Act 102 in 2002, which amended Section 171-95, Hawaii Revised Statutes to include commercial renewable energy producers as being eligible for directly issued leases by the Board. Prior to the passage of Act 102, the public auction process was the only means available to a renewable energy producer to obtain a lease from the State.

Consequently, without reasonable assurance of being issued a lease, potential renewable energy producers were reluctant to spend the significant time and money to conduct due diligence and secure required permits. In 2008 the legislature passed Act 90, which further amended Section 171-95 to expand the definition of a "renewable energy producer" to include any grower or producer of plant or animal materials used primarily for the production of other fuels and/or electrical energy.

#### HBE's Current Direct Lease Negotiations

For reference, at their meetings of October 10, and November 14 2008, the BLNR approved DLNR staff reports recommending the approval in principle for the direct negotiation of two ground leases with HBE.

One of the ground leases is intended for a Renewable Electricity Power Plant and will demise a 63.7-acre parcel situated at Maonakomalie and Kaapahu, in the District of North Hilo.

The second ground lease on vacant agricultural lands between Pa'auilo and O'okala are intended for the cultivation, management and harvesting of forest products, and biomass feedstock; consisting primarily of eucalyptus trees.

HBE processed its request in conformance with existing State laws and DLNR procedures, and is presently continuing forward with this process and believes it should be permitted to culminate its direct leasing effort with the DLNR for consideration and approval by the BLNR.

In support of this continuing effort, the following list provides a partial summary of the benefits and factors that support retention of the existing laws providing for the direct leasing of State Lands that will help to promote the viability and success of renewable agricultural and energy project:

- The HBE project is projected to provide leasing revenues of over \$ 600,000 per year to the State from lands that have been vacant since 1987. Furthermore, the HBE project will generate tax revenues of \$503 million over a 40 year term of operation.
- The HBE project is estimated to initially provide 41 direct jobs in forest management and plant operations and 60 indirect jobs with annual payroll benefits of \$4.9 million.
- The HBE project will help to renew a sustainable agricultural industry and economy on the Hamakua coast. The HBE business model calls for local utility of the wood and agricultural biomass resource on the Hamakua coast as opposed to exporting the product for offshore production uses. The centralized location of the plant site within the adjacent plantation area with utility of former private cane haul roads provides optimal processing efficiencies and significant mitigation of traffic impacts to the commuters on state and county roadways.



- From the outset of its request to the DLNR in June, 2008, HBE has been clear that it is not seeking the use of any existing leases on State agricultural lands, particularly those currently in cattle or dairy operations. Furthermore, HBE has indicated a willingness to include provisions in the leases with the State to allow for cattle grazing on the lands once the tree stock has been established.
- The HBE project will use lower cost renewable biomass fuel grown on a portion of the former Hamakua Sugar plantation instead of imported higher cost oil with likely future limited availability, shipping costs and environmental risks. Operating at full capacity, the HBE plant will eliminate the need for HELCO to purchase over 400,000 barrels of oil per year, or 16 million barrels during the 40 year life of the HBE plant. Applying this oil volume to recent mid-summer high oil prices, the State and its residents, can avoid the out of state exporting of up to \$ 50 million per year or \$ 2 billion over a 40 year term of operation.
- The project progresses the recently adopted State Clean Energy Initiative and will operate under best forest and energy management practices as a clean, renewable, and sustainable development that will benefit the Big Island residents and its labor force for many years.
- The State-owned 63.67-acre parcel being proposed as the site for the biomass energy generation facility is located at Maonakomalie and was previously leased to Laupahoehoe Sugar Company for sugarcane cultivation. Since 1987 the parcel has been fallow and unencumbered, with no lease revenue generation to the State.
- HBE's commercial forestry and biomass operation are planned to be operated on up to 13,000 acres of private and public lands. The operation will include the cultivation, management, harvesting of eucalyptus and other trees species. The wood and biomass resources will be processed for diversified uses in the forest product and renewable energy industry
- HBE has an understanding in place to use 13,000 acres of mature trees owned by private lands situated in Hamakua through 2021, and plans to be cultivating and growing out the forest and biomass feedstock on State and other public and private lands during the next 11 years for use commencing in 2021.
- The commitment by the State to HBE's request to locate a biomass energy generation facility on State land and cultivate, manage and harvest eucalyptus trees on State lands formerly cultivated with sugarcane is important to facilitate HBE's ability to complete its project financing commitments during this time of uncertainty in the financial markets.

Thank you for the opportunity to offer these comments.



**TESTIMONY**

**SB 50**

**(END)**