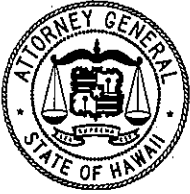


SB 2520



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2010**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2520, RELATING TO THE HAWAIIAN HOMES COMMISSION ACT.

**BEFORE THE:**

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

**DATE:** Thursday, February 18, 2010      **TIME:** 2:45 p.m.

**LOCATION:** State Capitol, Room 225

**TESTIFIER(S):** Mark J. Bennett, Attorney General, or  
Lisa C. Oshiro, Deputy Attorney General

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Chairs Gabbard and Hee and Members of the Committees:

The Department of the Attorney General has the following legal concerns in relation to the provisions of this bill.

This bill amends section 208 of the Hawaiian Homes Commission Act of 1920 (HHCA), to allow renewable energy production as an allowed use of Hawaiian Homestead lands. In this regard, section 207, HHCA, should likewise be amended since leases are currently limited to residential, agricultural, and pastoral uses.

Further, the phrase "Except as provided in paragraph (9)," proposed for insertion at the beginning of the first sentence of section 208(5) HHCA (page 2, line 14 of the bill) should also be inserted at the beginning of the last sentence of section 208(5). Currently, section 208(5), HHCA, prohibits the lessee from subletting the lessee's interest in the tract or improvements thereon.

In keeping with the State's trust obligation and to be consistent with similar requirements in other sections of the HHCA, subleasing pursuant to section 208(5) should also be subject to the approval of the department and such terms and conditions as the department may determine.

Finally, we believe that consent of the United States would be required for the amendments this bill makes to the HHCA before any of the changes can take effect.



**STATE OF HAWAII**  
**DEPARTMENT OF HAWAIIAN HOME LANDS**  
P.O. BOX 1879  
HONOLULU, HAWAII 96805

COMMENTS FROM KAULANA H. R. PARK, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
TO THE SENATE COMMITTEES ON ENERGY AND ENVIRONMENT &  
WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS  
ON SB 2520 - RELATING TO THE HAWAIIAN HOMES COMMISSION ACT

February 18, 2010

Chair Gabbard, Vice-Chair Hee and Members of the Committees:

The Department of Hawaiian Home Lands provides the following comments on this legislation that would allow our homestead lessees to enter into a sublease agreement for a portion of their leasehold land with a renewable energy producer.

This legislation is a significant policy change and we have not had an opportunity to gather input from our beneficiaries through our consultation process. We respectfully urge that your committee defer this bill until such time that we have sufficiently consulted with our beneficiaries.

We have received inquiries from our homestead farmers and ranchers to pursue supplemental revenue through sublease agreements for this purpose. However, in consideration of a similar past practice of subleasing farm and ranch lands for agricultural purposes that became prohibited by a court decision, it is prudent that we thoroughly investigate the legal implications of this legislation.

Finally, in the event that your committees move this bill forward, we request that you consider an amendment to the proposed language in Section 208(9)(B) to read as follows:

(B) The sublessee shall indemnify, defend and hold harmless the lessee, the department, the State of Hawaii, its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken on the subleased land, and procure sufficient insurance to provide this indemnification and defense if requested to do so by the lessee, the department, or the State of Hawaii;

Thank you for the opportunity to testify on this measure.



TESTIMONY IN SUPPORT OF S.B. 2520  
BEFORE THE  
HAWAII STATE SENATE COMMITTEE ON ENERGY AND ENVIRONMENT  
AND  
HAWAII STATE SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS  
Thursday, February 18, 2010  
2:45 p.m.  
Conference Room 225  
Hawaii State Capitol

Good afternoon Chairman Gabbard and Chairman Hee and Distinguished Senators.

My name is D. Noelani Kalipi and I am the Director of Government & Community Relations for First Wind. First Wind, through its affiliates, has successfully developed, constructed and operates Hawaii's largest utility-scale wind farm, Kaheawa Wind Power (30 MW) which is located on the island of Maui. **I am testifying in support of S.B. 2520 which allows homesteaders to enter into sublease agreements with renewable energy producers.**

First Wind has sought to work with the Department of Hawaiian Home Lands on several of its proposed projects in Hawaii. Our motivation to work with DHHL is based on our respect for Hawaii's indigenous peoples and the ways in which they understood how to utilize Hawaii's resources in a responsible manner that both met their needs and preserved those precious resources for future generations.

The goal of 40% electricity generation from renewable resources by 2030 is important not only for energy independence but for economic development. Our projects, in addition to producing clean energy with zero emissions, can be important economic drivers for the communities that we join. From the outset of its development in Hawaii, First Wind has sought to work with homesteaders the Department of Hawaiian Home Lands.

On Kauai, for example, we pursued a site in Moloa`a after consultation with the Anahola Hawaiian Homestead Association (AHHA) . We entered into an agreement with the AHHA to donate funds to their community development fund while we were testing the wind resource in Moloa`a, we committed to a hiring homesteaders if there were any employment opportunities during these early development phases, and we committed to a vocational training program if the project were to advance to construction and operation. Unfortunately the site in Moloa`a wasn't suitable due to environmental considerations.



Similarly, we have been working on Ikaika Wind Power I on Molokai, a 50 MW project that could be sited on lands owned by the Department of Hawaiian Home Lands. We have been in discussions with homesteaders and Molokai residents about the project since 2006. The project remains in early development stages and many more hours of discussion is necessary before the project can move forward.

As we have discussed our proposed projects in Hawaii, we have been approached by a number of homesteaders who have expressed a desire to work with us and to utilize their leased property for wind energy generation. Homesteaders from across the State of Hawaii have inquired about the possibility of working with us to put wind energy on their leased lands. Similar to farmers on the mainland, some homesteaders want to explore the economic benefit of wind energy as it completely consistent with agricultural use of lands including farming and grazing.

While we appreciate and understand the history of the sub-leases by homesteaders on leased lands, we support the opportunity to provide another avenue of economic development and empowerment to homesteaders. We look forward to working with this committee to decrease Hawaii's reliance on fossil fuels for electricity generation in a way that is culturally and environmentally appropriate.

**gabbard1 - Carlton**

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**From:** Lynn DeCoite [ldrd@wave.hicv.net]  
**Sent:** Wednesday, February 17, 2010 9:39 PM  
**To:** ENETestimony  
**Cc:** Sen. Clayton Hee  
**Subject:** sb 2520

THE SENATE  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2010

COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair  
Senator J. Kalani English, Vice Chair

COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Senator Clayton Hee, Chair  
Senator Jill N. Tokuda, Vice Chair

AMENDED NOTICE OF HEARING

DATE: Thursday, February 18, 2010  
TIME: 2:45 p.m.  
PLACE: Conference Room 225  
State Capitol  
415 South Beretania Street

TESTIMONY IN SUPPORT OF SB 2520

Aloha Chairman Gabbard, Chairman Hee and members of the committee,

My name is Lynn DeCoite and I am a farmer and rancher on the island of Molokai and I support SB 2520 with amendments. The bill should read that in order to engage in a sublease with a renewable energy producer the sublease should be actively farming and or ranching before engaging in that sublease. The reason being that all leases on ag lands need to file a farm plan with the Department of Hawaiian Homelands in order to retain that lease. It will than justify the intent of lease and prevent future lawsuits.

For that reason I support SB 2520 with amendments.

Mahalo,

Lynn DeCoite