

har3-Megan

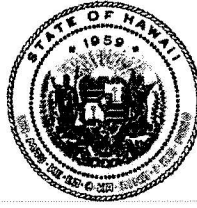
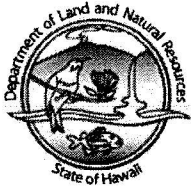
From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 12, 2010 5:27 PM
To: WLOtestimony
Cc: michael.s.yoshinaga@hawaii.gov
Subject: Testimony for SB2951 on 3/15/2010 10:30:00 AM
Attachments: SB2951SD2_LNR_03-10-15_WLO-AGR.PDF

Testimony for WLO/AGR 3/15/2010 10:30:00 AM SB2951

Conference room: 325
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Russell Tsuji
Organization: Dept. of Land and Natural Resources
Address:
Phone: 587-0241
E-mail: michael.s.yoshinaga@hawaii.gov
Submitted on: 3/12/2010

Comments:

LINDA LINGLE
GOVERNOR OF HAWAII



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

RUSSELL V. TSUJI
FIRST DEPUTY

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Department of Land and Natural Resources
Testimony Transmittal Cover Sheet**

Date Submitted: March 12, 2010

Testifier's Name/Title: Russell Tsuji, Deputy Director

Committee Name: House Committees On
WATER, LAND & OCEAN RESOURCES (WLO)
and
AGRICULTURE (AGR)

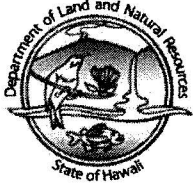
Day and Date: Monday, March 15, 2010

Time/Location: 10:30 AM, Conference Room 325

Measure Number: SENATE BILL 2951, SENATE DRAFT 1 – RELATING TO
AGRICULTURE

Number of Copies: 1 (including original) to Room 438 in the State Capitol

LINDA LINGLE
GOVERNOR OF HAWAII



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

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LAND
STATE PARKS

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

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

**Monday, March 15, 2010
10:30 AM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 2951, SENATE DRAFT 2
RELATING TO AGRICULTURE**

Senate Bill (SB) 2951, Senate Draft (SD) 2 provides for extraordinary and previously unprecedented levels of compensation to lessees 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) strongly opposes the proposed legislation because the concept behind the bill has the potential to impede the State's flexibility to set-aside portions of state lands for state public purposes.

SB 2951 SD2 is a reincarnation of SB 1345 that was vetoed by the Governor in 2009. The main differences between SB 2951 SD2 and SB 1345 are that the current bill does not provide for reimbursement of lessees' "loss of reasonably anticipated income", or for an automatic lease extension when land is taken for public purposes. But like its predecessor, SB 2951 SD2 would require the State to provide unprecedented additional levels of compensation in the form of hypothetical future income losses relating to breeding livestock under some circumstances, insurance costs and real property taxes payable on lands subsequent to the original lease date.

State law already provides clear safeguards for tenants and terms for leasing public lands. Chapter 171, Hawaii Revised Statutes (HRS), ensures transparency and fairness in the disposition of State assets and most importantly to guaranty that State land resources will be available when needed to meet the greater public safety and other public needs of all of Hawaii's residents. We point out that all existing tenants were aware of these provisions, willingly entered into leases with the state under these conditions, and received rent well below the market rate, in many cases for decades, due to these provisions. It would be in direct conflict with basic contract law and the general state welfare to now pass a measure which requires the

state to provide extraordinary and unprecedented compensation to such tenants when they have reaped years of benefit from below market rates. Indeed, to take such action at a time of great economic downturn and when the legislature is looking to departments to maximize state revenue is downright puzzling.

While providing limited preferential terms for the disposition of public lands for certain types of activities such as agriculture, renewable energy, government projects, industrial parks and utilities, etc., is well established in statute based on policy considerations, the State's right and responsibility to withdraw portions or all of the leased lands for a greater public purpose has never and should not be compromised.

The law already requires the State to compensate the lessee for the reasonable loss of vested rights under those affected leases. The Department's standard lease form contains a provision requiring the State to lower rents in proportion to the reduction in leased area and compensate the lessee for improvements made unusable in the process of taking leased lands for such purposes. Similarly, Hawaii law provides with respect to agricultural and pasture leases that:

"upon withdrawal any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee to the leased land being withdrawn."

On top of the relief already provided by law, SB 2951 SD2 would require the State to reimburse lessees for any insurance required by the Department to be maintained on lands subject to easements that are placed on the land subsequent to the original lease date, if the easements prevent the lessee from using the land for its original intended use. Ostensibly, if such an easement prevented the lessee from making any use of the land, the Department could waive the insurance requirement for the area subject to the easement. However, there may also be cases where an easement prevents a lessee from using the land for its original purposes, but does not prevent all beneficial use of the area. For example, if the lease is a pasture lease, an easement might restrict the grazing of cattle on a portion of the land. But the lessee may have a water delivery system or other infrastructure on the easement area that provides a benefit to the remaining usable lease area. In such a case, the lessee should be required to maintain liability insurance for its operations in the easement area at its own cost.

SB 2951 SD2 would also require the State to reimburse a lessee for real property taxes paid on an area subject to such an easement. In the case of the Palila Critical Habitat Mitigation Lands easement that was placed on certain state pasture leases on Mauna Kea, Department staff researched the real property taxes lessees pay on the easement areas and determined that the amounts were negligible. The County Real Property Tax Division classifies the easement areas as waste with the result that the total annual real property tax on 2,226 acres of easement area under one lease was 84 cents per year. If an easement allows a lessee to continue beneficial use of the easement area¹, as illustrated in the hypothetical example from the preceding paragraph, then it is not unreasonable to require the lessee to bear these nominal costs.

¹ In the case of the Palila mitigation, the Board of Land and Natural Resources (Board) reduced the annual rent, pro rata, based upon the square footage of the easement area. Thus, no rent is assessed for the easement area, despite the Lessee retaining control and some beneficial use of that area. In addition, the Board allowed those Lessees affected by the conservation easement to use 10% of the

Additionally, SB 2951 SD2 would require the State to reimburse pasture lessees for losses to breeding stock when the animals cannot be relocated or "marketed" for breeding value. In the normal situation, a lessee would have one or two years or more of notice of an impending taking of lease land. Accordingly, the Department believes a pasture lessee would have ample time to plan for the relocation or sale of livestock, and that the proposed amendment would only encourage damage claims against the State.

The lessees have enjoyed the special benefits associated with the use of the public lands including in many instances very low rent that effectively constitutes a subsidy of certain agricultural activities. As stated above, the withdrawal provision was included in the State's standard lease provisions to ensure that any important or overriding public purpose arising after the disposition of public lands can be addressed in an appropriate manner by the withdrawal of any lands needed for such action. The proposed modifications to the withdrawal provision would deprive the State of its right to use public lands for legitimate and important public purposes.

Passage of this bill in its current form would hinder the Department'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.

remaining lands for alternative agricultural use, with no increase in rent for the difference between pasture and the alternative agricultural use.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 14, 2010 12:06 PM
To: WLOtestimony
Cc: robertharris@mac.com
Subject: Testimony for SB2951 on 3/15/2010 10:30:00 AM
Attachments: SB 2951 (SD2) - Compensation for Ag Leases.pdf

Testimony for WLO/AGR 3/15/2010 10:30:00 AM SB2951

Conference room: 325
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Robert D. Harris
Organization: Sierra Club, Hawai'i Chapter
Address: P.O. Box 2577 Honolulu, HI
Phone: 8085386616
E-mail: robertharris@mac.com
Submitted on: 3/14/2010

Comments:



Sierra Club Hawai'i Chapter

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

March 15, 2010, 10:30 A.M.

(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO SB 2951 (SD2) WITH A PROPOSED AMENDMENT

Aloha Chair Ito, Chair Tsuji, and Members of the Committees:

The Hawai'i Chapter of the Sierra Club *opposes* SB 2951 (SD2), which would penalize the State if it elects to utilize its contractual and statutory authority to take back rights to State land. While we support reasonably compensating farmers and ranchers when State leases (in full or in part) are revoked, we are concerned this bill gives away too much.

Haw. Rev. Stat. Ch. 171 already provides due process and compensation for revoked land. This measure goes further and compensate lessees for hypothetical future income losses, insurance costs, and real property taxes (even if the lessee retains use and control of the property). This goes beyond any other analogous situation and potentially eliminates the State's defenses to a damage claim like the duty to mitigate one's damages.

There is no need to "sweeten the pot" for agricultural lessees, particularly when it may hamstring the State from conducting reasonable conservation measures reasonably necessary to preserve and protect State lands for the future. Remember, most of these properties have been leased at significantly below market value -- "sweetheart deals" -- in order to encourage agriculture in Hawai'i. We're not sure why the State would want to fundamentally alter the terms of this arrangement to the taxpayer detriment.

Suggested Amendment:

If this measure is to proceed, we suggest amending it to apply to only new State leases signed after the effective date and to instruct the State to consider this new obligation when establishing the lease rent.

Mahalo for this opportunity to provide testimony.

har3-Megan

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 12, 2010 6:21 PM
To: WLOtestimony
Cc: mz@conservehi.org
Subject: Testimony for SB2951 on 3/15/2010 10:30:00 AM
Attachments: SB 2951 SD 2.pdf

Testimony for WLO/AGR 3/15/2010 10:30:00 AM SB2951

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Marjorie Ziegler
Organization: Conservation Council for Hawai'i
Address: 250 Ward Avenue Suite 212 Honolulu HI 96814
Phone: 808 593-0255
E-mail: mz@conservehi.org
Submitted on: 3/12/2010

Comments:



Conservation Council for Hawai'i

Testimony Submitted to the House Committee on Water, Land, and Ocean Resources
and House Committee on Agriculture
SB 2951 SD 2 Relating to Agriculture
Hearing: Monday, March 15, 2010 10:30 am Room 325

Opposition to SB 2951

Aloha. Conservation Council for Hawai'i opposes SB 2951 SD 2, which provides for fair compensation when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.

SB 2951 is not in the public interest. It will have an adverse fiscal impact on the State, in general, and the Department of Land and Natural Resources, specifically. Our understanding is that the current law already calls for fair compensation when this situation arises. Why is this bill necessary? A nearly identical bill was vetoed by the Governor last year.

SB 2951 is not necessary because HRS Chapter 171 – governing leases of state land – already provides a fair process and adequate compensation to lessees of state land in the event leased land is revoked for an unforeseen reason. Essentially, SB 2951 is a give-away to private parties leasing state land. Last year, DLNR provided detailed information on how a similar bill last year would affect the State and DLNR, and why it should be vetoed.

SB 2951 was motivated by rancher on the Big Island who have had the privilege of leasing state (ceded) land on Mauna Kea and now fear proposals to restore habitat for the endangered palila bird in the area. We believe this is an unusual situation, and the entire law governing leases should not be changed because of four ranchers.

If, in fact, there are reasons to amend HRS Chapter 171, the legislature should request a comprehensive review by the Legislative Reference Bureau or other appropriate entity next session.

Please oppose SB 2951 SD 2. This bill is not in the public interest. Mahalo nui loa for the opportunity to testify.

Marjorie Ziegler



Hawai'i's Voice for Wildlife – *Ko Leo Hawai'i no na holoholona lohiu*

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President: Maura O'Connor * Treasurer: Kim Ramos * Secretary: Douglas Lamerson
Directors: Madelyn D'Enbeau * Maka'ala Ka'auomoana * Hannah Springer
Executive Director: Marjorie Ziegler

Attached: Final draft of Environment Hawai'i article on similar bill in 2009

FINAL DRAFT Environment Hawai'i July 09 Leases SB 1345

Ranchers Who Lost Land to Palila Seek Extra Compensation from State

To judge by the testimony submitted, **Senate Bill 1345**, calling for holders of leases of state lands to be compensated if any acreage is withdrawn, was one of the less controversial measures taken up by the 2009 Legislature. Only the Department of Land and Natural Resources voiced opposition to the bill in hearings by several committees of the House and Senate. All the other testimony – all of it from ranchers and cattlemen's groups – was strongly in support.

Yet once the bill was sent to Governor Linda Lingle, SB 1345 suddenly generated fierce interest among environmental and conservation groups, who worry it could set a bad precedent and, what's more, undermine the state's ability to exercise responsible stewardship over public lands.

The bill calls for the state to compensate lessees for the "loss of reasonably anticipated income associated with the withdrawn leased land," to reimburse lessees "for any insurance costs associated with the withdrawn" land, and, at the lessee's request, to extend the lease for "not more than the number of years remaining in the original lease."

What prompted the bill was the dissatisfaction of four ranchers with terms under which conservation easements were placed over some 6,500 acres of high-altitude Mauna Kea lands that had been included in their leases. The easements are called for in a 1999 agreement involving state and federal agencies that sets forth mitigation measures to offset the loss of habitat for the endangered palila (*Loxioides bailleui*) caused by the rerouting of the cross-island Saddle Road.

The ranchers are called out specifically in the findings section of the bill: "The purpose of this Act is to prevent similar situations as the Saddle Road withdrawal from occurring in the future."

Existing law provides that public land under lease "shall be subject to withdrawal by the board of land and natural resources at any time during the term of the lease with reasonable notice ... for public uses or purposes, including ... easements of all kinds." When land is withdrawn, lease rents are to be reduced in proportion to the value of the land withdrawn, and lessees are to be paid the "proportionate value" if legally permitted, permanent improvements are damaged or destroyed. If crops are taken, the Land Board is to pay the lessee the value of the crops. (See Section 171-37, paragraph 3, of Hawai'i Revised Statutes, for the full text.)

Laura Thielen, DLNR administrator, was alone in her opposition to the bill. "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," she noted. "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 the department compensate a lessee for 'loss of reasonably anticipated income associated with the withdrawn leased land.' ... 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."

Thielen also noted that existing law already authorizes the Board of Land and Natural Resources "to grant lease extensions ... and make other modifications to the lease where the partial taking of leased land results in significant economic hardship to the lessee.... The bill would allow the taking of even a small



Conservation Council for Hawai'i

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.”

As the bill progressed through cross-over and into the House of Representatives, Thielen's testimony grew more impassioned and her arguments lengthier. On April 6, she told the House Committee on Finance, “An automatic extension in statute would go against all the provisions for fairness in the leasing of state land in Chapter 171, HRS [Hawai'i Revised Statutes]. When seeking public lands for private use, potential lessees are well aware of the benefits and drawbacks of leasing state lands as opposed to conducting their activities on private lands. First and foremost is the knowledge that those lands are public assets that must serve primarily the interests of the general public and the public trust purposes, and secondarily the needs of a private user.”

Mitigating Circumstances

To understand the bill's genesis, it is necessary to go back ten years, to 1999, when the heads of the state departments of Transportation and Land and Natural Resources signed a memorandum of understanding with representatives of five federal agencies (the Federal Highways Administration, or FHWA, the Military Traffic Management Command, the U.S. Army Garrison—Hawai'i, the Fish and Wildlife Service, and the U.S. Geological Survey's Biological Research Division). The MOU set forth the measures that each agency committed to undertake to mitigate the loss of palila habitat as a result of improvements to the Saddle Road. Part of the mitigation measures included setting aside so-called “replacement lands,” areas that were or could be habitat for palila that could replace land lost to the road project.

The DLNR committed to two tasks with respect to the replacement lands: first, to assist the FHWA and the state DOT “in compensation negotiations with current lessees of the state replacement lands;” second, to “perform all administrative and right-of-way related work to ensure subdivision and transfer of the [palila critical habitat] replacement land parcels.”

In 2001, the Legislature passed Act 236, instructing the DLNR to “expedite discussions” with representatives of the four ranches affected by the designation of the replacement lands: Parker Ranch, K.K. Ranch, S.C. Ranch, and Boteilho Hawai'i Enterprises. The department was to “identify and investigate all alternatives that will: (1) Fairly compensate the ranchers for losses suffered as a result of the withdrawal of any leased lands; and (2) Avoid providing exceptions to public land leasing policies.” Act 236 also authorized the DLNR to allow lessees to use up to 10 percent of the land remaining in their lease for “alternative agricultural use” without increasing lease rent.

When it reported on the negotiations in January 2002, the DLNR told the Legislature that the ranchers would be eligible for reimbursement of “actual reasonable expenses for vacation of the property” as provided for in federal law, “as well as any required payment for improvements to the property.”

Some of the ranchers “felt that compensation by DOT would not sufficiently address the actual damages,” the report stated. Federal law “primarily views compensation for cattle on a salvage value basis and does not address the loss of future revenue from additional calves,” it noted.



Hawai'i's Voice for Wildlife – *Ko Leo Hawai'i no na holoholona lohiu*

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According to Dave Gedeon of the Federal Highways Administration, the ranchers could have received compensation for relocation and for improvements under federal law, but their expenses had to be documented. None of the ranchers could satisfy this requirement, he said.

In an effort to address the ranchers' concerns, the Land Board approved "in principle" lease extensions if ranchers needed longer lease terms as a condition of financing. "With these extensions," the DLNR report stated, "the lessees will have another 20 years to recoup those revenues lost due to the removal of the palila mitigation areas from grazing."

At the time of the report, all four leases were to expire within 10 years. "With the anticipation that the [Land] Board will grant lease extensions... the ranchers feel that the impact of the loss of the grazing areas to the palila mitigation requirement has been reasonably mitigated," the DLNR wrote. "Although not what they would consider ideal, they are accepting of the Board's actions."

A Slow Start

In November 2002, a 10-year easement over 6,542 acres of the land under lease to the ranchers on the north and west slopes of Mauna Kea was granted to the state Department of Transportation, for which the DOT paid the DLNR \$221,900. Under the original MOU, the state was to pay for installing an ungulate-proof perimeter fence around the replacement lands, but by 2003, it was clear that the state would not have the funds. In January 2004, the MOU was amended, so that now funds for fencing would be covered by the Federal Highways Administration. The USGS would take over responsibility for controlling predators and alien species on the replacement lands. The DLNR would be responsible only for mowing for a period of five years.

It took years – and some \$2.6 million in federal highway funds – for the replacement lands to be fenced, however. And in the meantime, the ranchers were free to graze their cattle in the easement areas, rent-free.

SC Ranch, where the easement took 791 acres out of the 7,780 acres originally under lease, was notified in September 2005 that fencing was completed except for final gate installation. Still, the DLNR did not give the ranch "official notice" to remove all cattle until July 2006, with a deadline to get the cattle out by August 15, 2006. The annual lease rent for SC Ranch had been reduced by \$3,597 to adjust for the easement. Thus, to SC Ranch, the value of the use of state pasture lands for three years and eight months came to roughly \$13,200.

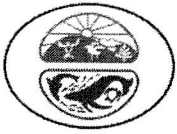
Boteilho Hawai'i Enterprises, whose lease covered 7,932.36 acres, saw its pre-easement annual rent of \$32,640 drop to \$23,470.77, to adjust for the 2,228 acres removed in the easement. It, too, was given an August 15, 2006 deadline for cattle removal from the easement area. The value of 3.67 years of free grazing on the easement lands in the Boteilho lease comes to \$33,650.

K.K. Ranch lost 2,123 acres to palila critical habitat, out of the 7,267 acres originally under lease. For that, it saw its annual lease rent reduced from \$30,000 to \$21,233, giving the easement lands a rental value of \$8,767 a year. K.K. Ranch also enjoyed the free use of the easement lands for 3.67 years, for a total value of \$32,175.

Unlike the three previous leases, that held by Parker Ranch was on the western slope of Mauna Kea, adjoining existing palila critical habitat. Of the 1,739 acres under lease, 1,399 were placed in the conservation easement. For this lease, Parker Ranch saw its annual rent cut from \$9,125 to \$1,782. Again, the ranch was given an August 2006 deadline to have all cattle removed from the easement area. The use of 3.67 years of the easement area, rent-free, had a value of \$26,949 to Parker Ranch.

But the freeloading did not come to an end when the last fence was completed. According to DOFAW wildlife biologist David Leonard, "On Jason Moniz's ranch [K.K. Ranch], there have been cows on that easement persistently. Some of that was because the fence was damaged by very large storms, fences through the gullies washed out. But there also have been cases where the gates have been left open and cows come in on a pretty consistent basis."

The easements are to expire in 2012, when the Saddle Road mitigation agreement ends. What happens then?



Conservation Council for Hawai'i

According to DOFAW biologist Scott Fretz, "it's always been our intention to set those aside as forest reserves.... We testified against [SB 1345] and also recommended that the governor veto it... And we're hoping that she does. ... [SB 1345] would really complicate setting aside the lands, since it would require us to pay an unknown sum to those lessees, which would completely change the cost-benefit scenario for those lands."

-- Patricia Tummons



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har3-Megan

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 13, 2010 12:18 PM
To: WLOtestimony
Cc: gottlieb@hawaii.rr.com
Subject: Testimony for SB2951 on 3/15/2010 10:30:00 AM
Attachments: SB 2951 SD2 2010 House WLO-AGR.pdf

Testimony for WLO/AGR 3/15/2010 10:30:00 AM SB2951

Conference room: 325
Testifier position: support
Testifier will be present: Yes
Submitted by: Alan Gottlieb
Organization: Hawaii Cattlemen's Council
Address:
Phone: 808-306-7769
E-mail: gottlieb@hawaii.rr.com
Submitted on: 3/13/2010

Comments:



Hawaii Cattlemen's Council, Inc.

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

Monday March 15, 2010 10:30 am Room 325

SB 2951 SD2 RELATING TO AGRICULTURE

Provides for fair compensation, when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.

Chairs Ito and Tsuji and Members of the Committees:

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

The Hawaii Cattlemen's Council **strongly supports** SB 2951 SD2. 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!

The genesis for this bill stems from actions taken by the BLNR in November 2008 when there was a proposal before the board for a direct lease to be awarded to a bio-fuels company for 37,000 acres of State lands currently leased to several of our member ranches. Several of these ranchers were very concerned having already lost significant portions of their leases to previous takings by the BLNR in 2001 under the Cayatano administration as a result of a Palila Mitigation action required by the then proposed realignment of the Saddle Road. These beef cattle producers had upwards of 30% of their leases removed without any compensation other than a lease reduction comparable to the acreage they could no longer graze. Infrastructure loss, the need to reduce their herd size by up to 30% and the continuing fixed costs required to carry the reduced herd (which did not decrease with the loss of one third of their

carrying capacity) resulted in significant losses to particularly the smaller of the ranches. This all occurred while 15 million dollars in mitigation funds were distributed amongst the government agencies involved, including to DLNR upfront for the lease rent loss they would not receive from their lessees. To lose acreage which represented up to 30% of a beef cattle operation or any business is bad enough, but to not get any compensated for the taking was and still is absurd.

No business that invests large amounts of capital and plans its operation to function at a certain size should be subject to a significant change in the size or terms of their lease part way through their lease agreement. How could Wal-Mart or Home Depot function if part way through their lease their landlord said "we changed our minds and we're removing 30% of your lease". That would have a devastating effect on their business. We wonder why anyone would think it is not the same for a cattle ranch.

A rancher that loses grazing land can't just load up his cattle and head to the nearest livestock auction and get a high breeding value for his cattle. At best we can get only a much lower slaughter value and that is IF our local slaughter plants would be able to fit them into their slaughter schedule on a timely basis.

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.

Last year we had a similar bill, SB 1345, which addressed our concerns, and was passed by the legislature, but was vetoed by the Governor and not overridden by the Legislature. Since last year, we have met with Staff at DLNR and discussed many of their concerns with the prior bill, and have tried to address most of their concerns in this year's SB 2951.

We believe, as the State legislature did when in 2003 it passed Act 90, that it would be more appropriate if leases associated with agriculture are considered by people who understand and have agriculture as a priority. The preamble to Act 90, SLH 2003 stated: The purpose of this chapter is to ensure the long-term productive use of public lands leased or available to be leased by the Department of Land and Natural Resources for agricultural purposes by allowing these lands to be transferred to and managed by the Department of Agriculture. To date, some lands have transferred but many still reside in DLNR and the industry has found that ranchlands, especially are difficult to be transferred. This has been a very serious concern among our ranchers for many years, and we ask you to consider measures which would expedite the intent of Act 90.

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.

har3-Megan

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 12, 2010 7:49 PM
To: WLOtestimony
Cc: careyon@hdo.net
Subject: Testimony for SB2951 on 3/15/2010 10:30:00 AM

Testimony for WLO/AGR 3/15/2010 10:30:00 AM SB2951

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Carolyn Carey
Organization: Individual
Address: Carey Ranch, Co Rd 54 Alturas, CA
Phone: 530-233-2517
E-mail: careyon@hdo.net
Submitted on: 3/12/2010

Comments:

As a member of the Hawaii Cattlemen's Council (HCC), I wholeheartedly agree with the Testimony of the HCC previously presented on February 5, 2010.

I am a rancher in California and often deal with ranchers from Hawaii and their cattle. More to the point, as part of our ranching operation, we possess a permit to graze cattle on federal (U.S. Forest Service - USFS) land. As such, we are protected, at least have redress, against the whims of Congress, the President, the USFS, the Endangered Species Act ... and other federal regulators, by the Fifth Amendment to the U.S. Constitution, commonly known as the "Takings Clause."

It is only reasonable that state lands ranchers (lessees) be afforded similar protection as that provided those of us who lease federal lands for livestock operations.

As one whose business often depends on the success of Hawaii's ranchers, I appreciate the opportunity to comment on this bill that provides those ranchers a certain level of security. Thank you.

har3-Megan

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 12, 2010 6:59 PM
To: WLOtestimony
Cc: mgalimba@kuahiwiranch.com
Subject: Testimony for SB2951 on 3/15/2010 10:30:00 AM

Testimony for WLO/AGR 3/15/2010 10:30:00 AM SB2951

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Michelle Galimba
Organization: Kuahiwi Ranch
Address: Naalehu, Hawaii
Phone: 808 929 7333
E-mail: mgalimba@kuahiwiranch.com
Submitted on: 3/12/2010

Comments:

I support the testimony of the Hawaii Cattlemen's Council.

har3-Megan

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 13, 2010 10:41 AM
To: WLOtestimony
Cc: mcblivestock@gmail.com
Subject: Testimony for SB2951 on 3/15/2010 10:30:00 AM

Testimony for WLO/AGR 3/15/2010 10:30:00 AM SB2951

Conference room: 325
Testifier position: support
Testifier will be present: No
Submitted by: Michael "Corky" Bryan
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Submitted on: 3/13/2010

Comments: