

har3-Megan

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 15, 2010 8:42 AM
To: WLOtestimony
Cc: kaimiunger@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: Keith Unger
Organization: McCandless Ranch
Address: POB 500 Honaunau, Hi. 96726
Phone: 808-328-8246
E-mail: kaimiunger@gmail.com
Submitted on: 3/15/2010

Comments:

I strongly support this bill and agree with the testimony recently submitted by the Hawaii Cattleman's Council.

har3-Megan

From: Kristine.T.Uyeno@hawaii.gov
Sent: Monday, March 15, 2010 8:42 AM
To: WLOtestimony
Subject: testimony for SB 2951, SD 2 (HEARING TODAY)
Attachments: SB 2951 SD 2.doc; TESTIMONY TRANSMITTAL FORM.doc

Aloha,

Attached is the DOT's testimony for SB 2951, SD 2, which will be heard today, Monday 3/15, at 10:30a.

I corrected the draft number in this version that I'm sending...the previous one I sent said "SD 1".

Please accept our apologies for any kind of inconvenience this places, for submitting testimony on the day of the hearing.

Please call me at 286-4458 if you have any questions.

Thanks in advance,

Kristine Uyeno

State of Hawaii
Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813
Phone: (808) 587-2150

TRANSMITTAL OF TESTIMONY

COMMITTEES: WATER, LAND & OCEAN RESOURCES AND AGRICULTURE

HEARING DATE: Monday, March 15, 2010

HEARING TIME: 10:30 a.m.

BILL NO.: SB 2951, SD 2, RELATING TO AGRICULTURE

TESTIFYING: Brennon T. Morioka, Ph.D, P.E.
Director of Transportation
or Designee

COPIES REQUIRED: 1



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

IN REPLY REFER TO:

March 15, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 2951 SD 2

COMMITTEES ON WATER, LAND & OCEAN RESOURCES
AND AGRICULTURE

The Department of Transportation opposes this bill for the following reasons:

1. SB 2951 is the same as last year's (SB 1345), changing 171 HRS to include withdrawal of leased lands, fair compensation and lease extension. The bill requires lands withdrawn or made unusable a proportionate value thereof shall be paid to the lessee based upon the unexpired term of the lease. Any person with a long term lease shall be compensated for the present value of all permanent improvements in place at the time of the withdrawal. For any tree crops damaged, the board shall pay to the lessee the residual value of the trees taken and the value of crops, not harvested. Livestock shall be compensated by the board paying the lessee the difference of the appraised breeding value and the salvage value. The bill also requires the lessee to be entitled to compensation for costs attributed to the diminished use of the leased lands and reimbursement for any insurance costs and property taxes. This will cause an undue burden on public projects.
2. There will be a conflict between public purpose approved by the Legislature and paying for compensation not covered by federal laws and public purpose projects approved by Congress.

Under 2007 49 cfr 24.101 (5) (c), federal acquisition requirements for less than full fee interests all subparts apply. One requirement is to review the lease terms and condition acknowledged by the tenant (Lessee) when accepting the lease. Most lease terms have a condemnation clause that already adjusts for the compensation described above.

Under 24.105 when the State acquires tenant owned improvements as established to be real property, not personal property and just compensation established. This amount is the value of those improvements as it contributes to the fair market value of the whole property.

Under 24.106, the owner of the real property right (such as a lease) shall be reimbursed for all reasonable expenses the owner incurs, including: recording fees, transfer taxes, pro-rata share of any pre-paid property taxes, and moving and re-establishment costs.

This bill will affect the situation by creating a conflict with what is real property and what is personal property. For example, cattle is not considered as crop damage. Damages through federal regulations need to be supported by tax returns or other claims. If there are none, then it would be hard to justify. Other claims, such as the “in lieu of” payments, refer to going out of business costs. If the ranchers are not going out of business, this expense could not be evoked. Under federal regulations we need to reimburse based on receipts and justification.

In the Governor’s Message No. 834, SB 1345 was not approved because of being “objectionable and disproportionately and inappropriately compensates the lessees of public lands above other lessees of State lands.” Other laws already provide procedures for the withdrawal of leased lands and rents adjusted to reflect the portion of lands withdrawn and they must be adjusted to reflect the portion of lands withdrawn and must be compensated for the value of improvements on the withdrawn portion. The automatic extension circumvents the authority of the Board of Land and Natural Resources and hinders their ability to ensure that public lands are used for the highest and best public use.