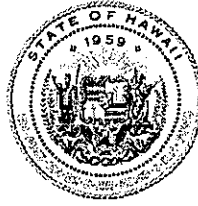
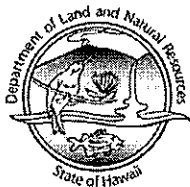


**TESTIMONY**  
**SB 2951**

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the Senate Committee on  
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**Friday, February 5, 2010  
2:45 PM  
State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 2951  
RELATING TO AGRICULTURE**

Senate Bill (SB) 2951 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previously unprecedented levels of compensation to lessees when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.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 is a reincarnation of SB 1345 that was vetoed by the Governor in 2009. The main differences between SB 2951 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 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

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

**RUSSELL Y. 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

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 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 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 area<sup>1</sup>, as illustrated in the hypothetical example from the preceding paragraph, then it is not unreasonable to require the lessee to bear these nominal costs.

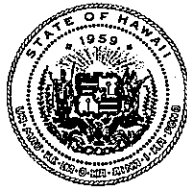
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<sup>1</sup> In the case of the Palila mitigation, the Board of Land and Natural Resources (Board) reduced the annual rent, pro rata, based upon the square footage of the easement area. Thus, no rent is assessed for the easement area, despite the Lessee 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 remaining lands for alternative agricultural use, with no increase in rent for the difference between pasture and the alternative agricultural use.

Additionally, SB 2951 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.



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

IN REPLY REFER TO:

February 5, 2010

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

SENATE BILL NO. 2951

COMMITTEE ON WATER, LAND, AGRICULTURE & HAWAIIAN AFFAIRS

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.



## **Hawaii Agriculture Research Center**

*Administration: P.O. Box 100, Kunia, HI 96759*

*Ph: 808-621-1350/Fax: 808-621-1359*

### **TESTIMONY BEFORE THE SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**SENATE BILL 2951**

**RELATING TO AGRICULTURE**

**February 5, 2010**

Chairman Hee and Members of the Committee:

My name is Stephanie Whalen. I am Executive Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center and our research and support staff.

**HARC supports Senate Bill 2951 Relating to Agriculture which provides for fair compensation for agricultural lessees when land is withdrawn during lease period.**

The action that occurred regarding the withdrawal of lands from lands leased from the state by agricultural entities demonstrates the lack of respect for agricultural businesses and lack of understanding of the importance of a quantity of land to certain types of agricultural operations.

While the state on the one hand is verbally encouraging increasing food self-sufficiency, its actions demonstrate the lack of understanding of what the needs are to increase or in this case to maintain viable agricultural operations.

We urge you to support **Senate Bill 2951** and thank you for the opportunity to testify.

# MAUI CATTLEMEN'S ASSOCIATION

**Maui Cattlemen's  
Association**

**PO Box 473**

**Kula, HI 96790**

**Board of Directors  
and Officers**

**Brendan Baltazar**

**Harry Cambra**

**Alex Franco**

**Greg Freil**

**Jimmy Gomes**

**William G. Jacintho**

**John Kim**

**Mike Murakami**

**Amber Starr**

**Toni Thompson**

**Sustaining  
ranching  
communities in  
Hawaii**

## TESTIMONY

February 3, 2010

Submitted via email: [WTLTestimony@Capitol.hawaii.gov](mailto:WTLTestimony@Capitol.hawaii.gov)

FROM: Maui Cattlemen's Association

TO: Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

HEARING DATE: Friday February 5, 2010

HEARING TIME: 2:45 pm. Conference Room 229 State Capitol

MEASURE: SB 2951

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

The Maui Cattlemen's Association is a non-profit organization representing small and large livestock producers in Maui County.

Thank you for introducing a bill that provides for fair compensation when leased public land for agricultural or pastoral use is withdrawn, condemned, or taken for public purpose. We support **SB 2951**

Thank you for the opportunity to provide comment on this Senate Bill.

You may reach Maui Cattlemen's Association through the address provided above.

Sincerely,

William Jacintho, President

Amber Starr, Vice President



NOBRIGA'S RANCH, INC  
P.O. BOX 1170  
WAILUKU, HI 96793

February 4, 2010

Honorable Senator Clayton Hee, Chair  
Committee on Water, Land, Agriculture and Hawaiian Affairs  
Hawaii State Capitol, Room 229  
415 South Beretania Street  
Honolulu, HI 96813

VIA EMAIL TO WTLTestimony@Capitol.hawaii.gov

Dear Senator Clayton Hee:

My few remarks as to Hearing on Friday, February 5, 2010 at 2:45pm

SB2522-Relating to Landowner Liability

~~Bill sounds good, but posted with signs is lost cause, since the Trespasser will tear it up. Faster than we can upkeep.~~

SB2527-Relating to Agriculture

~~When the Farm Bureau got "agricultural commodity" in they neglected to add livestock of the bovine, equine, swine, sheep, or goat species and the carcasses or meat of those species. We need to be added.~~

SB2951-Relating to Agriculture

Good bill but compensation of what? Fencing-pastoral improvements-sale of livestock on fair market price must be taken into consideration.

SB2930-Stink Bill

~~This can wipe out all livestock operation if passed. We are already contacted by DOH on Clean Water Act and EPA regulations. Any time it rains and livestock are in a confined area, there will be smell. The municipal sewer system creates smell. Our airport has that smell when wind blows the wrong way, will we close that too?~~

SB2115-Trespassing Law

~~Don't have the written Bill but SB2522 could be a duplicate. Posting signs to comply is a problem. The Trespassers know it's private lands.~~

Respectively Submitted,



BUDDY NOBRIGA  
Nobriga's Ranch, Inc.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, February 04, 2010 12:29 PM  
**To:** WTLTestimony  
**Cc:** jdmoniz@hawaiiantel.net  
**Subject:** Testimony for SB2951 on 2/5/2010 2:45:00 PM

Testimony for WTL 2/5/2010 2:45:00 PM SB2951

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: Jason D. Moniz  
Organization: Individual  
Address: P.O. Box 428 Paauilo, HI 96776  
Phone: 8089608409  
E-mail: [jdmoniz@hawaiiantel.net](mailto:jdmoniz@hawaiiantel.net)  
Submitted on: 2/4/2010

Comments:  
Supports Hawaii Cattlemen's council's testimony and position on this bill.



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

P O Box 437199 Kamuela HI 96743  
Phone (808) 885-5599 • Fax (808) 887-1607  
e-mail: [HCattlemens@hawaii.rr.com](mailto:HCattlemens@hawaii.rr.com)

SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS  
Friday February 5, 2010 2:45 pm Room 229

### **SB 2951 RELATING TO AGRICULTURE**

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

Chairman Hee and Members of the Committee:

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

The Hawaii Cattlemen's Council **strongly supports** SB 2951. 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 a 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 Cayetano 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.

**TESTIMONY**

**SB 2951**

**(END)**