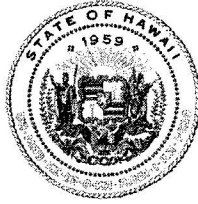
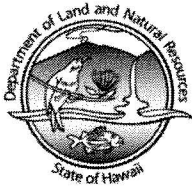


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

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

**Friday, March 18, 2011
10:30 AM
State Capitol, Conference 325**

**In consideration of
SENATE BILL 1443, SENATE DRAFT 2
RELATING TO IMPORTANT AGRICULTURAL LANDS**

Senate Bill 1443, Senate Draft 2 proposes to clarify that public lands that are transferred from the Department of Land and Natural Resources (Department) to the Department of Agriculture (DOA) shall be subject to the same standards for identifying and designating important agricultural lands, and that important agricultural land incentives shall not contradict or otherwise violate Chapters 166 and 166E, Hawaii Revised Statutes. The Department supports this bill and offers the following comments and concerns.

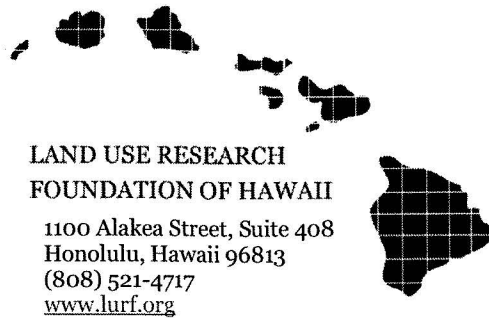
The Department has been transferring to DOA and the Agribusiness Development Corporation (ADC), public lands suitable for agriculture in the public lands inventory, in part pursuant to Act 90, Session Laws of Hawaii 1993. Throughout this process, the Department had experienced numerous delays resulting from a myriad of reasons that include the receiving agencies' inability to immediately assume management responsibility over those lands, often attributable to inadequate staffing and resources. Given the expected ongoing budgetary restrictions on government operations and staffing shortages, such delays are anticipated, if not certain, to continue. As such, the June 30, 2013 deadline for transferring 50 per cent of the qualified lands to DOA may not be realistic or feasible. The Department recommends that a longer timeline, such as 3 to 5 years, be specified to accommodate and reflect the current unfortunate budgetary realities.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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



March 18, 2011

Representative Clift Tsuji, Chair and Representative Mark J. Hashem, Vice Chair
House Committee on Agriculture
Representative Jerry L. Chang, Chair and Representative Sharon E. Har, Vice Chair
House Committee on Water, Land & Ocean Resources

Testimony Supporting (in part) and Opposing (in part), SB 1443, SD 2, Relating to Agriculture. (Requires transfer of certain public lands from the Department of Land and Natural Resources (DLNR) to the Department of Agriculture (DOA). Clarifies that public lands so transferred shall be subject to the same standards for identifying and designating important agricultural lands (IAL), and that IAL incentives shall not contradict or violate Hawaii Revised Statutes (HRS), Chapters 166 and 166E.)

Friday, March 18, 2011 at 10:30 a.m. in CR 325

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

SB 1443, SD 2. The stated purposes of this bill are to:

1. Require the DOA and the DLNR to identify and map certain public lands to be considered for transfer from the DLNR to the DOA;
2. Establish a time table for the transfer of those parcels that have been identified and mapped;
3. Require the DOA to identify, of those transferred public lands, which lands should be considered for designation by the Land Use Commission as IAL;
4. Clarify that public lands that are transferred from the DLNR to the DOA are subject to the standards established in Chapter 205, HRS, for identifying and designating IAL8; and

5. Require the transferred lands to have access to certain IAL incentives; provided that those incentives do not contradict or otherwise violate the conditions and requirements of HRS Chapters 166 and 166E, under which the DOA will manage the important public agricultural lands.

LURF concurs in part with, and opposes in part, the current SB 1443, SD 2.

This bill proposes to:

1. Clarify that public lands transferred from DLNR to DOA shall be subject to the same standards for identifying and designating IAL;
2. Change the current consensus-based IAL law and process of current IAL law and instead, limit DOA's process of identification and designation of IAL to the lands which are subject to HRS chapter 166 and 166E;
3. Rescind DOA's obligations and responsibilities under the existing state law which requires that DOA establish priorities for leasing public lands within their jurisdiction;
4. Alter the authority of a superior law (the IAL law) and make it subject to an inferior law (HRS Chapters 166 and 166E);
5. Provide that IAL incentives shall not contradict or otherwise violate HRS Chapters 166 and 166E;
6. Usurp the rights of Hawaii's farmers by denying them the right to certain IAL incentives, and instead, provide the Board of Agriculture (Board) with the authority to determine which IAL incentives or uses shall be made available to farmer lessees, and which conditions are to be placed thereon.

While LURF concurs with the proposal in this bill to clarify that public lands transferred from DLNR to DOA shall be subject to the same standards for identifying and designating IAL, LURF respectfully **opposes** all other proposals made under SB 1443, SD 2, for the following reasons:

- **The proposition that IAL incentives should not contradict or violate HRS Chapters 166 and 166E is inconsistent with the spirit, intent and principles of the IAL laws.**

The IAL laws were enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." The IAL laws established a "new paradigm" which avoids requirements and mandates, and instead focuses on promoting agricultural viability by providing incentives for farmers and landowners to designate lands as IAL, and to build necessary infrastructure.

The IAL laws constitute a consensus-based, comprehensive and consistent state-wide law implemented through open public and legislative processes and hearings

lasting a period of over five years, in which all agricultural and government stakeholders, **including the DOA**, were involved and given the opportunity to provide input. Having passed with the legislative finding that they are consistent with the goals and objectives of creating a viable agricultural industry and protecting important agricultural lands as mandated in the Hawaii Constitution, the IAL laws were intended to serve as the foremost policy regarding local agricultural lands, and are considered to be the paramount legislation and overriding body of laws, with respect to agriculture in Hawaii.

For the DOA to now take the position that IAL incentives should not contradict or violate HRS Chapters 166 and 166E, is inconsistent with the spirit, intent and principles of the IAL laws. Any concerns relating to inconsistencies or potential anticipated inconsistencies between existing laws and the IAL laws should have properly been raised during the more than five years of public process and legislative hearings held in connection with the enactment of the IAL laws. If any concessions are now required as a result of inconsistencies discovered between the IAL laws and other existing agriculture-related laws, policies, rules, or regulations, amendments should not be made to the IAL laws, but to those other laws, policies, rules and regulations, regardless of whether they may arguably emulate or even surpass the purpose and intent of the IAL legislation.

It is LURF's position that the designation of agricultural lands and the creation of standards and incentives relating to such lands which are encompassed in the IAL laws, should not be altered, superseded, or contradicted by changes to any existing laws affecting agriculture as proposed by SB 1443, SD 2.

➤ **Negative consequences for farmers; Potential denial of incentives specifically intended by IAL laws to help farmers and farm operations.**

The inconsistencies between the IAL laws and HRS Chapters 166 and 166E which are identified by this bill do not appear to support the statutory amendments proposed, which could potentially deny farmers of certain incentives afforded to them by the IAL laws. It would be well if those incentives found inconsistent with, or in violation of HRS Chapters 166 and 166E, were specifically identified in order that concerns relating to the grant of those incentives may be addressed and resolved, rather than made subject to the scrutiny of the Board.

The DOA and the Board were no doubt aware of these IAL incentives when the IAL laws were in the process of being enacted. Having had ample opportunity to object or comment at the appropriate time, the DOA and the Board should not now attempt to retain control over the application of incentives, particularly those which are unquestionably agriculture-related and specifically intended to provide farmer benefits (e.g., farm dwellings; employee housing).

CONCLUSION. The designation of agricultural lands and the creation of standards and incentives relating to such lands which are encompassed in the IAL laws (which laws were enacted based on stakeholders' consensus and years of public and legislative processes and hearings) should not be altered, superseded, or contradicted by changes to any existing laws affecting agriculture as proposed by this bill. More importantly, the inconsistencies and potential inconsistencies between the IAL laws and HRS Chapters 166 and 166E which are discerned by this bill do not appear to support the amendments proposed, which could potentially deny farmers of certain incentives purposefully afforded to them by the IAL laws.

Based on the above, LURF respectfully requests that SB 1443, SD 2 **be held in** Committee.

Thank you for the opportunity to testify and to provide comments in support, and in opposition to this bill.