



HB1617 HD2 SD1
RELATING TO PUBLIC LANDS
Senate Committee on Ways and Means

March 29, 2012

9:00 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB1617 HD2 SD1 as written, the most recent draft of which inserted language that would require the Department of Agriculture to transfer title to public agricultural lands under its jurisdiction to the Agribusiness Development Corporation.

The Agribusiness Development Corporation was created as a rapid-response agency to stabilize deteriorating plantation water systems and transition vacant plantation lands to use for diversified agriculture. It enjoys broad exemptions from existing processes when disposing of and developing upon land. Specifically, it is not subject to HRS 171-64.7, which requires a 2/3 majority vote of the legislature to sell certain public lands and requires OHA be notified of such land disposals.

HRS 171-64.7 was enacted as a result of a ceded lands settlement between the state and OHA to ensure that Public Land Trust lands for which OHA is entitled a pro rata portion of revenues would not be diminished without the opportunity for public comment, the legislature's approval, and the notification of OHA. Removing agricultural lands from the purview of this law would circumvent the system created to ensure state accountability for public trust lands while diminishing a source from which OHA is constitutionally entitled to a pro rata portion. In short, this bill would effectively controvert the state's trust obligation to Native Hawaiians.

Therefore, OHA urges the committee to remove Part II of HB1617 HD2 SD1. Mahalo for the opportunity to testify on this important measure.



Hawaii Cattlemen's Council, Inc.

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SENATE COMMITTEE ON WAYS & MEANS

March 29, 2012 9:00 a.m. Room 211

HB 1617 HD2 SD 1 RELATING TO PUBLIC LANDS

Provides for fair compensation when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.

Chair Ige, Vice Chair Kidani and Members of the Committee:

My name is Alan Gottlieb, and I am a rancher and the Government Affairs Chair for 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 HB 1617 HD 2, SD1.**

As you requested, we worked with DLNR and came up with language that we could both live with. DLNR's Changes were incorporated into Part 1 of SD 1.

As this bill states, the legislature closely considered this issue in 2010 and passed SB 2951 CD1, only to be vetoed by then Governor Lingle.

In 2010, we met with Gov Lingle's Policy director and discussed their concerns and felt we answered those concerns.

This bill essentially enhances existing laws on fair compensation when a State Agency withdraws land or places an easement on a State lessees' lease. Chapter 171-36, 37 & 38 already provide for Fair Compensation for "... the proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease..." and for "... the value of growing crops..."

What the current law does not do and what HB 1617 HD 2, SD1 proposes to do is add two things to the existing law:

1. Section 2, part (a) "In the case of breeding livestock that cannot be relocated or marketed for the breeding value, the board shall pay to the lessee the difference between the appraised breeding value and the salvage value, including the cost of transportation to a market on the island on which the leased land is located."

It had been argued in testimony by others on SB 2951 that a lessee would have plenty of notice (some said over 2 years) if their land was being withdrawn, but that is not always the case, and some may have as little as 6 months or less. What is the difference between a breeding animal and a market animal? A breeding animal has a useful life often over 10 years long, and that animal has a high cost to bring it to breeding age, or is often purchase and may be worth around \$1,000. That animal can't always be readily moved somewhere else, like some may assume. On the Mainland (and what the Federal Law assumes) a rancher could take their breeding animal to a local livestock auction and get its market value or put it on a truck and haul it to the next state and sell or pasture it there. But that is not the case in Hawaii. What would a rancher in Hawaii do with 1,000 breeding cows in a seven year drought like we are experiencing today? There is no other pasture to move the animals to, or buyers for large numbers of breeding animals. That rancher may have to have that animal slaughtered, and may receive only \$250 for its lower meat value. That is the loss we are referring to and which we think should be included in the loss of crop definition, already a part of the current law.

2. The second thing this bill does (Section 2 part b) is reimburses a lessee for costs associated with property taxes or insurance on lands upon which an easement has been placed by the State. DLNR in their own testimony on SB 2951 argued this is a miniscule amount, with which we agree, but imagine adding the insult to injury to a lessee who has a major portion of their lease placed under an easement, has NO use of that land, never needs to go on that land, but needs to bear the cost of property taxes and insurance for that land. One might think that an easement would generally be a small part of a lease, for a utility or road, but that is not always the case. In the case of the Palila mitigation for the Saddle Road on the Big Island in 2001, some ranchers lost over 30% of their leased areas (over 2,000 acres) which they cannot use in any way, but must still pay property taxes and insurance on that land with the easement. Why was an easement place, rather than withdrawing that land? We're not sure, but assume because it was expedient and did not require any subdivision.

This bill, while not retroactive for losses from past withdrawals, would apply not only to future leases but to existing leases for future takings. One of the earlier version of SB 2951 made it applicable only to future leases but we made a case and the legislature agreed that fair compensation should include all leases including existing ones, so that breeding animals be included in the existing law covering crop losses.

There was concern during the course of the 2010 legislative session that if there was a federal project that did not have the funds to meet the State's obligation in their lease, that the Federal Project may not happen. We believe we have found provisions in Federal law that would require the Federal Government to pay for the new provisions of breeding animals as they could be considered personal property: Code of Federal Regulations, Title 49, Volume 1, Part 24, Section 24.301, pg. 244, (14). In any case under laws of Eminent Domain in our country, the laws don't require fair compensation for what the Government can afford to pay, but requires payment for the value of the taking.

What HB 1617 HD 2, SD1 does not do (despite testimony in 2010 on SB 2951 to the contrary by others):

- It is not the same as the bill the Governor Vetoed in 2009, SB 1345. Senator's Takamine, Kokobun, Representatives Tsuji and Ito set up a meeting in November 2009 with several cattlemen, a representative of the Hawaii Farm Bureau Federation, Duane Okamoto then deputy at HDOA, DLNR staff including then Deputy Tsuji, DOT staff and Federal Transportation personnel and Biologists. While much of the discussion revolved around the past Saddle Road project, we reiterated that nothing we were trying to do with this bill affected past projects or the Palila mitigation. We then went through SB 1345 line by line and DLNR told us the things they could not live with and also told us the things that they were likely ok with. When SB 2951 was drafted, all of the items DLNR said they could not live with were removed. All that remained in the bill were the things that DLNR told the Senators and Representatives present that they could probably live with.
- It does not affect the Palila Mitigation and does not prevent the State from doing future withdrawals or placing easements. It simply requires fair compensation on any loss in value of breeding animals if the State does do a taking, in addition to their much larger exiting responsibility to pay fair compensation for assets constructed on the land.
- It is not retroactive and will not in any way affect previous takings.
- It does not give ranchers or farmers something that no other State lessee would receive in a taking or set a precedent. All State leases including commercial, industrial, resort and residential property leases are covered by Chapter 171-37 and provide for "...if any permanent improvement constructed on the land by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based on the unexpired term of the lease..."

Thank you for giving me the opportunity to testify in favor of this very important issue.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: jimmygomes@hawaii.rr.com
Subject: Testimony for HB1617 on 3/29/2012 9:00:00 AM
Date: Tuesday, March 27, 2012 1:50:44 PM

Testimony for WAM 3/29/2012 9:00:00 AM HB1617

Conference room: 211
Testifier position: Support
Testifier will be present: No
Submitted by: James Gomes
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Submitted on: 3/27/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: karin@princevillerranch.com
Subject: Testimony for HB1617 on 3/29/2012 9:00:00 AM
Date: Tuesday, March 27, 2012 5:07:21 PM

Testimony for WAM 3/29/2012 9:00:00 AM HB1617

Conference room: 211
Testifier position: Support
Testifier will be present: No
Submitted by: Karin Carswell Guest
Organization: Princeville Ranch
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Submitted on: 3/27/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: kaimiunger@gmail.com
Subject: Testimony for HB1617 on 3/29/2012 9:00:00 AM
Date: Tuesday, March 27, 2012 1:11:45 PM

Testimony for WAM 3/29/2012 9:00:00 AM HB1617

Conference room: 211
Testifier position: Support
Testifier will be present: No
Submitted by: Keith Unger
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Submitted on: 3/27/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: PSGMikilua@aol.com
Subject: Testimony for HB1617 on 3/29/2012 9:00:00 AM
Date: Tuesday, March 27, 2012 11:35:41 PM

Testimony for WAM 3/29/2012 9:00:00 AM HB1617

Conference room: 211
Testifier position: Support
Testifier will be present: No
Submitted by: Phyllis Shimabukuro-Geiser
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Comments:

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: jacinthow001@hawaii.rr.com
Subject: Testimony for HB1617 on 3/29/2012 9:00:00 AM
Date: Tuesday, March 27, 2012 10:48:50 PM

Testimony for WAM 3/29/2012 9:00:00 AM HB1617

Conference room: 211
Testifier position: Support
Testifier will be present: No
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Submitted on: 3/27/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
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Subject: Testimony for HB1617 on 3/29/2012 9:00:00 AM
Date: Wednesday, March 28, 2012 8:17:46 AM

Testimony for WAM 3/29/2012 9:00:00 AM HB1617

Conference room: 211
Testifier position: Support
Testifier will be present: No
Submitted by: Lani C. Petrie
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Submitted on: 3/28/2012

Comments:

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: lanipetrie@aol.com
Subject: Testimony for HB1617 on 3/29/2012 9:00:00 AM
Date: Wednesday, March 28, 2012 8:17:46 AM

Testimony for WAM 3/29/2012 9:00:00 AM HB1617

Conference room: 211
Testifier position: Support
Testifier will be present: No
Submitted by: Lani C. Petrie
Organization: Individual
E-mail: lanipetrie@aol.com
Submitted on: 3/28/2012

Comments: