

**SB 1158**

NEIL ABERCROMBIE  
Governor



RUSSELL S. KOKUBUN  
Chairperson, Board of Agriculture

JAMES J. NAKATANI  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

TESTIMONY OF **RUSSELL S. KOKUBUN**  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES  
ON  
WATER, LAND, AND HOUSING  
AND  
AGRICULTURE

FEBRUARY 12, 2011  
2:45 P.M.  
ROOM 225

SENATE BILL NO. **1158**  
RELATING TO AGRICULTURE

Chairpersons Dela Cruz and Nishihara, and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 1158. The purpose of this bill is to create the designation of exceptional use for certain agricultural activities; provides for special lease provisions for exceptional uses on public lands and in agricultural parks; and provides priority consideration for applications for exceptional use by the land use commission and other agencies. The department respectfully **opposes the sections of this bill** relating to Chapters 166 and 166E (Agricultural Parks and Non-Agricultural Parks, respectively) as we believe our current land leasing programs are flexible enough to accommodate most, if not all, of the issues contained in this bill.

The disposition of Department controlled State lands are codified within Chapters 166 and 166-E, HRS. We are not familiar with any appraisal standard that would determine what a "reasonable rent" would be. For example, the latest rent re-opening (2004) in the Waimanalo Agricultural Park established fair market rental at \$594 per acre per year; however, the Agricultural Park program does have lease rents as low as \$65 per acre per year in the Molokai Agricultural Park. For Non-Agricultural Park Lands, lease rents in Waimanalo range from \$490 to \$1,220 per acre per year, with an average rental of \$861 per acre per year. A rent that would



be reasonable to the State may not be considered so in the eyes of the lessee. There is often a misconception that rental re-openings always result in higher rents. It is important to remember that the rental is most often fixed for several years. It usually does not escalate annually in response to market conditions. This practice effectively discounts the rent for every year that passes. When the set time has passed, a fair rent is set by an independent real estate appraiser for the next term of the lease. The increase does not attempt to "make up" any of the lost income due to the discounting in the previous term. In almost every case, this practice is more beneficial to the lessee than to the lessor. In Hawaii, licensed professional appraisers employ the Uniform Standards of Professional Appraisal Practice (USPAP) in their valuations of agricultural lands to determine a "fair value" of the land upon which the rental is derived.

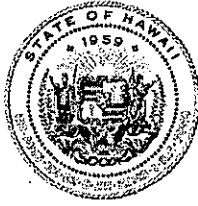
Further, the Agricultural Parks program is intended to be an "incubator" program for new farming ventures. After an initial lease term of 25 to 35 years, it is the experience of the department that the lessee has well established his agricultural enterprise and is ready to move onto Non-Agricultural Park Lands with a long-term tenure which may be extended for up to 65-years and provides expansion opportunities. The Non-Agricultural Park Lands program rules contain provisions which allow current lessees, in good standing, to request a lease conversion to a new, long-term lease without public competition.

We have also had strong concerns from individuals and agricultural industries that since the Agricultural Parks program is an incubator, once the lease has expired (term up to 55 years), some other agricultural business should be given the opportunity to lease the land and develop its own enterprise thereby enhancing agriculture and providing agricultural diversity and food security for Hawaii. The automatic renewal of an existing lease in the Agricultural Parks program defeats the purpose of an incubator environment and limits participation in the program.

Again, we wish to respectfully reiterate that we firmly believe that the sections of this bill relating to Agricultural Parks and Non-Agricultural parks are unnecessary.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

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

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FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
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CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

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

Before the Senate Committees on  
AGRICULTURE  
and  
WATER, LAND AND HOUSING

Saturday, February 12, 2011  
2:45 PM  
State Capitol, Conference Room 225

In consideration of  
**SENATE BILL 1158**  
RELATING TO AGRICULTURE

Senate Bill 1158 proposes to create the designation of exceptional use for certain agricultural activities; provides for special lease provisions for exceptional uses on public lands and in agricultural parks; provides priority consideration for applications for exceptional use by the land use commission and other agencies. The special lease provisions are the mandatory inclusion of a right of first refusal and the use of "reasonable" rent instead of fair market rent. The Department of Land and Natural Resources (Department) respectfully **opposes the sections of this bill** that pertain to Chapter 171, Hawaii Revised Statutes (HRS).

Currently under Chapter 171, HRS, the Department is required to use fair market value to determine rent for agricultural leases. Ordinarily, licensed professional appraisers are employed to make an independent determination of that value. Appraisers apply the Uniform Standards of Professional Appraisal Practice in their valuations when determining the "fair market value" of agricultural lands. Generally, those values tend to be very low and favorable to prospective agricultural users and are the primary reason why there is a high demand for public agricultural lands. The "reasonable rent" requirement imposed by the bill is not based on any accepted appraisal standard and is contingent upon highly speculative and subjective criteria that would make the uniform application of this methodology extremely difficult. If a valuation method other than fair market value is desirable to assist agricultural users, the Department believes imposition of this methodology is premature and further review and discussion of this matter should be conducted with appropriate valuations professionals with expertise in agricultural valuations.

A right of first refusal is essentially an option to extend a lease that can be exercised unilaterally by a lessee. Such options have a chilling effect on other prospective bidders' willingness to bid on the property. Many prospective bidders would be reluctant to invest the substantial time, effort and resources to prepare and submit a bid with the knowledge that the existing lessee can exercise his or her right and nullify the bid at any time. Rights of first refusal provide an unfair benefit to the current lessee by depriving persons awaiting the published termination of the lease a fair opportunity to compete for the use of those lands at public auction. That inherent inequity ensures lower bids and consequently less revenue to the State.

A right of first refusal clearly goes against all the provisions for fairness in the leasing of state land in Chapter 171, HRS, and inappropriately impinges on the Board of Land and Natural Resources' discretionary authority to control the use of state lands. 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.

The safeguards and terms for leasing public lands are codified in Chapter 171, HRS, to ensure transparency and fairness in the disposition of State assets. Paramount in that process is the need to ensure and maintain the State's ability to use its land resources when and as needed to meet all of the State's obligations and priorities as well as the greater public needs of all of Hawaii's residents. Fundamental to that responsibility is the preservation and protection of the discretionary authority of the Board to consider and determine the most appropriate use of State land at any given time, including when and if an ongoing use should continue. The Board's ability to fulfill its fiduciary obligations to promote all five public trust purposes equally should never be compromised by any erosion of this authority.

Lastly, the Department does not have the expertise or the resources necessary to establish rules for designating exceptional uses on public lands. The designation of exceptional uses for agricultural and horticultural purposes requires a thorough understanding of and expertise in leading edge agricultural and horticultural techniques and processes, which the Department lacks. That expertise lies within the Department of Agriculture and the University of Hawaii's Tropical Agriculture Program.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE  
GOVERNOR  
RICHARD C. LIM  
INTERIM DIRECTOR  
MARY LOU KOBAYASHI  
PLANNING PROGRAM ADMINISTRATOR  
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Statement of  
**MARY LOU KOBAYASHI**  
Planning Program Administrator, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON AGRICULTURE  
AND  
SENATE COMMITTEE ON WATER, LAND, AND HOUSING**  
Saturday, February 12, 2011  
2:45 PM  
State Capitol, Conference Room 225  
  
in consideration of  
**SB 1158  
RELATING TO AGRICULTURE.**

Chairs Nishihara and Dela Cruz, Vice Chairs Kahele and Solomon, and Members of the Senate Committees on Agriculture and Water, Land, and Housing.

The Office of Planning (OP) **does not support SB 1158**. SB 1158 would amend various statutes to: (1) provide for rules and lease negotiations to allow for “exceptional uses” on public lands, involving innovative application of agricultural or horticultural propagation techniques or processes, cultural protection of historical or important gardens, agricultural or horticultural education, or experimental or exploratory applications of agricultural or horticultural techniques; (2) establish special lease provisions for such “exceptional uses”; and (3) amend Part III of Chapter 205, Hawai‘i Revised Statutes (HRS), to establish procedures for priority processing of permit applications and renewals at no additional cost to applicant for “exceptional uses” provided that the majority of lands held, owned, or used by applicant shall be designated as important agricultural lands (IAL). “Exceptional use” is limited to activities or enterprises

engaged in the activities mentioned above, begun no later than December 31, 2009 on lands under lease for an area of ten or fewer acres.

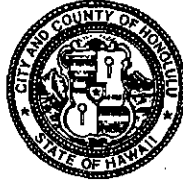
The respective State agencies' administrative rules should provide sufficient flexibility to accommodate these exceptional uses. Furthermore, there are concerns regarding enacting special provisions for a narrow class of "exceptional uses"—those with lease areas less than 10 acres and established prior to December 31, 2009—as the bill will not benefit similar activities of a larger scale or activities of such a nature established after December 31, 2009.

Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
MAYOR



DAVID K. TANOUE  
DIRECTOR

JIRO A. SUMADA  
DEPUTY DIRECTOR

February 12, 2011

The Honorable Clarence K. Nishihara, Chair  
and Members of the Committee on Agriculture  
The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Committee on Water, Land,  
and Housing  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chairs Nishihara, Dela Cruz, and Members:

**Subject: Senate Bill No. 1158**  
**Relating to Agriculture**

The Department of Planning and Permitting (DPP) opposes Section 2 of Senate Bill No. 1158, which provides priority consideration for applications for "exceptional uses" by the land use commission and other agencies.

Building Permits are currently processed on a first come first serve basis. Priority processing of a permit application involving exceptional use would place all other permit applications behind the priority application. The loss of time of time for these "sidetracked" applications will likely cause an increase in their carrying costs. This is not a fair and equitable process, and ultimately bad for the rest of the economy. As an alternative, the state could provide grants to qualifying projects to use the Third Party Review option. The use of certified plan checkers would expedite the review process, but not affect our queue lines.

We also note that use of public funds for exceptional uses may require the preparation of an Environmental Assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS). The bill should be explicit in the applicability of Chapter 343, HRS.

Please defer Senate Bill No. 1158. Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "David K. Tanoue", is written over a horizontal line.

David K. Tanoue, Director  
Department of Planning and Permitting

DKT: jmf  
Sb1158-AgrExceptUse-mh.doc





**Hawaii Farm Bureau**  
F E D E R A T I O N

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TESTIMONY

RE: **SB1158** RELATING TO AGRICULTURE

Chair Nishihara, Chair Dela Cruz and Members of the Committee:

**Hawaii Farm Bureau Federation** on behalf of commercial farm and ranch families and organizations across the State is in **strong support of SB1158**, creating an exceptional use category for consideration in leases of public lands.

Agriculture, critical to increasing the states level of self sufficiency is recognized as a public trust in the State Constitution. Lands that provide products critical to provide for the self sufficiency should be included within this “exceptional uses” category. These include pasture lands that are critical to provide for local beef, floriculture and other plants that reduce the needs for import and in the process protect our food as well as environment from invasive species. All of agriculture is part of a system and when people speak of self sufficiency, “food” cannot be separated and be viable by itself.

For example, local livestock producers, including dairies are moving towards grassfed operations. Access to pastures is critical to having viable operations. Such pastures should be included in this definition of “exceptional uses”

In light of the difficulties of starting new farm and ranch operations, viability of existing farms and ranches should be celebrated and provide cause for protection. They should be afforded the first right of refusal option.

We respectfully request consideration of existing uses of these lands ...not just those that are listed to be recognized as “exceptional uses”. Educational uses are important but when it comes to ‘self sufficiency’, it is the operating farm or ranch that will be critical.

We respectfully request your support in moving this measure forward along with focus placed on the Constitutional Mandate to increase local self sufficiency. We appreciate this opportunity to provide our opinion on this matter. If there are any questions, please contact **Warren Watanabe** at 2819718. Thank you.