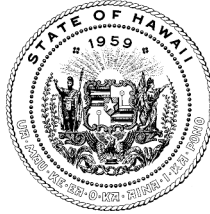


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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

**Before the Senate Committee on
WAYS AND MEANS**

**Friday, March 2, 2012
9:30AM
State Capitol, Conference Room 211**

**In consideration of
SENATE BILL 2207, SENATE DRAFT 1
RELATING TO PUBLIC LANDS**

Senate Bill 2207, Senate Draft 1 proposes to provide 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previously unprecedented levels of compensation to lessees when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.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.

Senate Bill 2207, Senate Draft 1 is a reintroduction of Senate Bill 2951 that was vetoed by the Governor in 2010. Like its predecessor, Senate Bill 2207, Senate Draft 1 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 guarantee 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. The Department points 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.

WILLIAM J. AILA, JR.
CHAIRPERSON
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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.¹ 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."²

On top of the relief already provided by law, Senate Bill 2207, Senate Draft 1 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. No lessee has approached the Department with such a request.

Senate Bill 2207, Senate Draft 1 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 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.

Additionally, Senate Bill 2207, Senate Draft 1 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

¹ In the case of the palila critical habitat mitigation area on Mauna Kea, 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.

² Senate Bill 2207, Senate Draft 1 states that it is the Department's position that a rent reduction is sufficient compensation in a withdrawal situation. But the Department has never taken that position. Rather, the Department's position is that the current law, including compensation for improvements taken, is sufficient. In the case of the palila mitigation easement, the affected lessees were given the opportunity by the Department of Transportation to submit claims for improvements lost as a result of the withdrawal. None of lessees submitted claims.

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.