

# SB2670

RELATING TO PUBLIC LAND LEASEHOLDERS RIGHTS.

Requires the board of land and natural resources to seek input from existing lessees as part of its evaluation to determine whether to award a lease to a renewable energy producer.

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 Committees on  
WATER, LAND & HOUSING  
and  
ENERGY & ENVIRONMENT

Thursday, February 23, 2012  
2:15 PM  
State Capitol, Conference Room 225

In consideration of  
SENATE BILL 2670  
RELATING TO PUBLIC LAND LEASEHOLDER RIGHTS

Senate Bill 2670 proposes to require the Board of Land and Natural Resources (BLNR), when evaluating a potential direct lease to a renewable energy provider, to seek input from the existing lessee regarding the renewable energy producer's proposal. The Department of Land and Natural Resources (Department) opposes this bill because it is unnecessary and because it mandates the BLNR to seek input from an existing lessee when such input may not be appropriate or desirable.

Chapter 171, Hawaii Revised Statutes (HRS), grants the BLNR various powers to issue leases for public lands. In deciding on whether or not to approve a lease, the BLNR is already empowered to seek input from any sources the BLNR deems necessary or desirable, including an existing lessee. In addition, the BLNR's decisions are made at meetings that are open to the public and allow for any member of the public (including an existing lessee) to present written and/or oral testimony.

Mandating the BLNR to seek input from an existing lessee is not only unnecessary, but may also be inappropriate in certain circumstances. For example, Senate Bill 2670 would require the BLNR to seek input from an existing lessee: (1) When the proposed renewable energy lease does not have any impact on the existing lessee rights under the existing lease<sup>1</sup>; and (2) When

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<sup>1</sup> Section 171-95-3(b), HRS, already prohibits the BLNR from issuing a lease to a renewable energy producer if it would result in the involuntary termination of a lease of public land held by an existing lessee who is currently in compliance with the terms of the lease.

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

the existing lessee does not have the knowledge or expertise to comment on a renewable energy proposal.

For these reasons above, the Department opposes this bill.



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

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SENATE COMMITTEE ON WATER, LAND AND HOUSING  
AND  
SENATE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

Thursday February 23, 2012 2:15 p.m. Room 225

**SB 2670 RELATING TO PUBLIC LAND LEASEHOLDERS RIGHTS.**

Requires the Board of Land and Natural Resources to seek input from existing lessees as part of its evaluation to determine whether to award a lease to a renewable energy producer.

Chairs Deal Cruz and Gabbard and Vice Chairs Solomon and English, and Members of the Committees:

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 SB 2670.**

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 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). 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! 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.

One of our key positions in our Strategic Plan is **"To work to preserve public grazing lands with a "no net loss of State grazing productivity " policy by restricting the leasing of public lands which have historically been used for grazing leases to only qualified ranchers and on lease terms appropriate to encourage responsible pasture use and management."** One reason for this policy is a

critical mass issue **“Hawaii’s cattle industry needs a core of larger producers to survive to preserve the necessary critical mass that benefits all producers and keeps the operation of the industry’s infrastructure (transportation, packing houses, market opportunities, etc) viable.**

In 2009 SB 50 passed the legislature and became law after a veto override, becoming Act 19 of 2009. In part it said:

*A lease to a renewable energy producer under this section shall not result in the involuntary termination of a lease of public land held by an existing lessee who is currently in compliance with the terms of the lease.*

Of course this does not prevent the State from withdrawing 99% of someone’s existing lease.

The genesis for this 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. The affected tenants learned about this when they woke up to read in the morning paper that there would be a hearing the next day at BLNR possibly taking some or all of their leases away from them and using them instead for a bio-fuels project, via a direct lease arrangement. We understand from several of our members who were affected lease holders, that they had not even been contacted by DLNR that they may lose their leases for this project.

At that time, the Bio-fuels companies were told specifically by DLNR staff to NOT discuss their projects with existing lessees.

We can support co-use, if it is truly a win-win and not negotiated with a hammer over our heads. We strongly support co-uses with wind turbine projects where cattle can graze right under the windmills, or Photo-voltaic projects which use much smaller areas of land. Monty Richards at Kahua Ranch has been doing grazing under a wind farm for over 30 years. We are worried about a tree project where the cattle need to be fenced out for the first few years so they don’t eat or stomp the seedlings, can possibly come in for grazing for a few years after that, but after which further grazing is impossible because grass doesn’t grow under the canopy of the trees. A true win-win would mean that **if for example**, 20% of the land from some of these traditional pasture leases were removed and granted to others, that these others or the State helped provide compensation or offsetting benefits so that the remaining 80% of the land could be as productive as 100% of the land previously was. This can be done with improved infrastructure, such as cross fencing, pasture improvements or even irrigated pasture. Increasing carrying capacity per acre can be done, but usually costs more than the revenue from grazing alone can support. If biofuels in fact can generate that much more income, then it appears feasible and equitable that a condition of taking back a portion of a lease should include such an offset for the displaced tenant. True win-wins can be negotiated if Board of Land and Natural Resources seeks input from existing lessees as part of its evaluation to determine whether to award a lease to a renewable energy producer, as proposed by this bill.

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



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 19, 2012 10:07 PM  
**To:** WLH Testimony  
**Cc:** jacinthow001@hawaii.rr.com  
**Subject:** Testimony for SB2670 on 2/23/2012 2:15:00 PM

Testimony for WLH/ENE 2/23/2012 2:15:00 PM SB2670

Conference room: 225  
Testifier position: Support  
Testifier will be present: No  
Submitted by: William Jacintho  
Organization: Maui Cattlemen's Association  
E-mail: [jacinthow001@hawaii.rr.com](mailto:jacinthow001@hawaii.rr.com)  
Submitted on: 2/19/2012

Comments:



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 19, 2012 7:58 PM  
**To:** WLH Testimony  
**Cc:** trkahua@aol.com  
**Subject:** Testimony for SB2670 on 2/23/2012 2:15:00 PM

Testimony for WLH/ENE 2/23/2012 2:15:00 PM SB2670

Conference room: 225  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Herbert M "Tim" Richards III  
Organization: Kahua Ranch Ltd  
E-mail: [trkahua@aol.com](mailto:trkahua@aol.com)  
Submitted on: 2/19/2012

Comments:

**1/20/2012**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 20, 2012 9:28 AM  
**To:** WLH Testimony  
**Cc:** kaimiunger@gmail.com  
**Subject:** Testimony for SB2670 on 2/23/2012 2:15:00 PM

Testimony for WLH/ENE 2/23/2012 2:15:00 PM SB2670

Conference room: 225  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Keith Unger  
Organization: McCandless Ranch  
E-mail: [kaimiunger@gmail.com](mailto:kaimiunger@gmail.com)  
Submitted on: 2/20/2012

Comments:

My name is Keith F. Unger and I manage McCandless Ranch in South Kona, Hawaii. I strongly support SB 2670 as it creates a win-win situation between cattlemen and alternate energy consortiums.





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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 20, 2012 5:16 AM  
**To:** WLH Testimony  
**Cc:** PSGMikilua@aol.com  
**Subject:** Testimony for SB2670 on 2/23/2012 2:15:00 PM

Testimony for WLH/ENE 2/23/2012 2:15:00 PM **SB2670**

Conference room: 225  
Testifier position: **Support**  
Testifier will be present: No  
Submitted by: Phyllis Shimabukuro-Geiser  
Organization: **West County Farm Bureau**  
E-mail: PSGMikilua@aol.com  
Submitted on: 2/20/2012

Comments:

**Support**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 20, 2012 7:30 AM  
**To:** WLH Testimony  
**Cc:** ray.foster@monsanto.com  
**Subject:** Testimony for SB2670 on 2/23/2012 2:15:00 PM

Testimony for WLH/ENE 2/23/2012 2:15:00 PM **SB2670**

Conference room: 225  
Testifier position: **Support**  
Testifier will be present: No  
Submitted by: Raymond Foster  
Organization: **Individual**  
E-mail: [ray.foster@monsanto.com](mailto:ray.foster@monsanto.com)  
Submitted on: 2/20/2012

**Comments:**

The Molokai Farm Bureau, an affiliate of the Hawaii Farm Bureau Federation supports all farmers and Ranchers in their right to grow and market their products. SB2670 provides existing agricultural lease holders with the common courtesy of notification when their lease holdings are in jeopardy. Preservation of HI based agricultural industries is vital to the long term well being of our islands' economy. Support for SB2670 is respectfully submitted.  
RFoster



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 22, 2012 7:58 AM  
**To:** WLH Testimony  
**Cc:** fmencher@hawaii.rr.com  
**Subject:** Testimony for SB2670 on 2/23/2012 2:15:00 PM

Testimony for WLH/ENE 2/23/2012 2:15:00 PM SB2670

Conference room: 225  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Frederick M. Mencher  
Organization: Individual  
E-mail: [fmencher@hawaii.rr.com](mailto:fmencher@hawaii.rr.com)  
Submitted on: 2/22/2012

Comments: