

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
FINANCE

Friday, February 22, 2013
11:00 AM
State Capitol, Conference Room 308

In consideration of
HOUSE BILL 488, HOUSE DRAFT 1
RELATING TO APPRAISALS

House Bill 488, House Draft 1 proposes to require the valuation of public agricultural or aquacultural land to be based on the land's agricultural or aquacultural use, economic considerations, relevant risk factors and societal benefits. The bill also requires that, in the case of disinterested appraisals, costs greater than one year's existing rent shall be borne by the Department of Land and Natural Resources (Department). **The Department opposes this bill.**

This bill proposes to substitute its own valuation criteria in place of those employed through the nationwide professional standards, experience and expertise of qualified appraisers. Furthermore, through its limited application to State owned lands, this bill creates an arbitrary distinction for the valuation of lands based purely on the issue of ownership. Revenues generated by public land dispositions are used to fund various public purposes consistent with the Department's fiduciary obligations to protect, preserve and manage the State's natural resources. The Department believes it also has a public trust obligation to manage its lands in a fair, consistent and unbiased manner. The Department does not believe it would be fulfilling its fiduciary obligation if it were to allow a certain select industry of private for-profit entities to pay below market rents while other private sector industries are paying fair market rent for the use of public lands.¹

A consequence of this bill would be lower lease rent valuations and as a result, a reduction in the Department's revenues and ability to effectively carry out its mission. Furthermore, the Department finds the bill's requirement to bear the associated costs in excess of one year's current rent to be particularly onerous. By creating an additional fiscal burden on the Department, as well as imposing a limitation on potential revenues, this bill would have the

¹ Section 171-43.1, Hawaii Revised Statutes, does allow the Board of Land and Natural Resources ability to lease public lands to qualified nonprofits at below market rents when appropriate.

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

ESTHER KIA'AINA
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

unintended consequence of limiting dispositions of public land for agricultural and aquacultural purposes.



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

2343 Rose Street • Honolulu, Hawaii 96819
Phone: (808) 848-2074 • Neighbor-Islands: (800) 482-1272
Fax: (808) 848-1921 • Email: info@hfbf.org
www.hfbf.org

February 22, 2013

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 488, HD1
RELATING TO APPRAISALS

Room 308
11:00 AM

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson and Members of the Committee:

I am Dean Okimoto, President of the Hawaii Farm Bureau Federation (HFBF). Organized since 1948, the HFBF is comprised of 1,950 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community

HFBF strongly supports of HB 488, HD1 which would clarify the intent of HRS 171-17 regarding lease rent assessment of DLNR's agricultural lands.

Unlike the situation in most other states, many of Hawaii's farmers depend on leased land for their livelihoods. For Hawaii's agriculture to thrive, rents must be appropriate to the agricultural use of the land and not based on "market value" of properties that can be used for other purposes.

DLNR currently appraises the value of its agricultural lands based on "highest and best use," which is interpreted to mean the most lucrative use of the land. This interpretation leads to large increases in agricultural rents, which may not be supportable by reasonable farming activities. Under DLNR's current rules, a farmer who wishes to appeal DLNR's assessment must pay the full cost of outside appraisal – an amount that can equal many years' rent. The risk of large, near-term rent increases and the excessive cost of appeals strongly discourage investment by farmers and may eventually force them off their farms.

SB 589's amendments to HRS 171-17 are consistent with several other subsections of HRS 171 and other Hawaii statutes such as HRS 246-10 that refer to the valuation of agricultural lands. These portions of the law require that the specific use of the land, its characteristics, and its agricultural productivity be taken into account when valuing agricultural lands. Unfortunately, HRS 171-17 is less clear, and needs to be modified to ensure that assessments are made on the basis of the land's value for agricultural use.

Article XI of Hawaii's Constitution states, "The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." DLNR's current lease assessment policies are inconsistent with these mandates. HFBF therefore urges you to support Hawaii's leasehold farmers and ranchers by passing HB 488, HD1.

Thank you for this opportunity to provide our opinion on this important matter.



Hawaii Cattlemen's Council, Inc.

P O Box 437199 Kamuela HI 96743

Phone (808) 885-5599 • Fax (808) 887-1607

e-mail: HCattlemens@hawaii.rr.com

HOUSE COMMITTEE ON FINANCE

February 22, 2013 11:00 a.m. Room 308

HB 488 HD1, RELATING TO APPRAISALS

Requires valuation of public agricultural or aquacultural land to be based on the land's agricultural or aquacultural use, economic considerations, relevant risk factors, and societal benefits. In the case of disinterested appraisals, requires that costs greater than one year's existing rent shall be borne by DLNR. Effective July 1, 2020. (HB488 HD1)

Chair Luke 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 488, HD1.**

Ultimately, it would be desirable for all leases for agricultural or aquacultural operations be moved from DLNR to HDOA. The legislature agrees with this and passed what became Act 90, SLH 2003. However, there have been a number of reasons that some lands have not been transferred, such as lands that are on property zoned other than agriculture or have mixed zoning. HDOA rules are set up to encourage agriculture, and make it practical to do so. DLNR's rules, we are told, are to get the "Highest and Best use" for the lands, which we are told often means the most money possible for the State.

When the DLNR lease rents are based solely on monetary considerations of "highest and best use," Hawaii's local agriculture industry suffers. The appraisal process should consider past market prices, global economic factors, percentage of usable land for agriculture purposes, and the influence of factors outside of farmers and ranchers control such as natural disasters. The process also should recognize the multiple societal benefits of agriculture including sustainable food production, land conservation, and preservation of open and green space.

By placing limits on potential appraisal costs, the farmers or ranchers will help to manage their costs. When the cost of an outside appraisal would exceed the equivalent of one year's current rent, that "prudent management," referenced in the existing statute should be clarified to indicate that such an appraisal would be conducted by the most qualified departmental staff then available. Or, if an outside appraisal is desired by the Department, any appraisal cost above one year's current rent would be borne by the Department.

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



Local Food Coalition

HOUSE COMMITTEE ON FINANCE
Friday, February 22, 2013 11:00 a.m. Room 308

HB 488, HD1 RELATING TO APPRAISALS

Requires valuation of public agricultural or aquacultural land to be based on the land's agricultural or aquacultural use, economic considerations, relevant risk factors, and societal benefits.

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, and Members of the Committee:

My name is Dean Okimoto, and I represent the Local Food Coalition on this matter.

The Local Food Coalition (LFC) brings together farmers, ranchers, livestock producers, investors and other leading organizations, who collectively manage more than 1 million acres of land, and produce the majority of food in our state. Solving our challenge of increasing the local food supply — putting more local food on local plates — can best be accomplished by bringing people and organizations together who can work on the entire food value chain in a systematic way.

The Local Food Coalition strongly supports HB 488, HD1.

Unlike the situation in most other states, many of Hawaii's farmers depend on leased land for their livelihoods. For Hawaii's agriculture to thrive, rents must be appropriate to the agricultural use of the land and not based on "market value" of properties that can be used for other purposes.

DLNR currently appraises the value of its agricultural lands based on "highest and best use," which is interpreted to mean the most lucrative use of the land. This interpretation leads to large increases in agricultural rents, which may not be supportable by reasonable farming activities. Under DLNR's current rules, a farmer who wishes to appeal DLNR's assessment must pay the full cost of outside appraisal – an amount that can equal many years' rent. The risk of large, near-term rent increases and the excessive cost of appeals strongly discourage investment by farmers and may eventually force them off their farms.

HB 488, HD1's amendments to HRS 171-17 are consistent with several other subsections of HRS 171 and other Hawaii statutes such as HRS 246-10 that refer to the valuation of agricultural lands. These portions of the law require that the specific use of

the land, its characteristics, and its agricultural productivity be taken into account when valuing agricultural lands. Unfortunately, HRS 171-17 is less clear, and needs to be modified to ensure that assessments are made on the basis of the land's value for agricultural use.

Article XI of Hawaii's Constitution states, "The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." DLNR's current lease assessment policies are inconsistent with these mandates. HFBF therefore urges you to support Hawaii's leasehold farmers and ranchers by passing HB 488, HD1.

Thank you for this opportunity to provide our opinion on this important matter.



THE HOUSE
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

COMMITTEE ON FINANCE

DATE: Friday, February 22, 2013
TIME: 11:00 a.m.
PLACE: Room
State Capitol
415 South Beretania Street

RE: Testimony in strong support of HB 488 HD1 RELATING TO APPRAISALS

Chair, Vice Chair, Committee Members:

HB 488 HD1 addresses problems with HRS 171-17 in regards to DLNR appraisal of agricultural and aquacultural lands, including the appraisal process, valuation considerations, rent increases, and appraisal costs. Valuable guidance in consideration of this important legislation is provided in HRS 246-10 Valuation; consideration in fixing, as well as in HRS 171-10 Classes of Land, HRS 171-33 Planning Generally, and HRS 171-34 Planning; intensive agriculture and pasture uses B. Leases or Sales.

Valuation When the DLNR lease rents are based solely on monetary considerations, as is currently the case, Hawai'i's local agriculture industry suffers. The appraisal process should consider proposed use or uses, relevant site conditions, past market prices, global economic factors, percentage of usable land for agriculture purposes, and the influence of factors outside of farmers and ranchers control such as natural disasters. The process should also recognize the multiple societal benefits of agriculture including sustainable food production, land conservation, and preservation of open and green space. In short, it should support the state's goals of increasing local food production, food self-sufficiency and food security.

The current monetary focus on rent determinations is often said by DLNR to be justified by their interpretation that rents must be based on the "highest and best use" of the subject land. However, the only place in HRS 171 where "highest and best use" is defined in monetary terms is in the specific case of 171-18.5 – Sugarcane lands conveyed for the development of housing projects, to the Hawaii housing finance and

development corporation, for determination of amount due to the department of Hawaiian home lands. The use of such an interpretation for the appraisal of agricultural and aquacultural lands is contrary to the State's stated goal of supporting agriculture, and to the Constitutional mandate of supporting increased food self-sufficiency.

Elsewhere in statute, in HRS 246-10, "highest and best use" is simply the classification of lands into six classes: (A) Single-family and two-family residential; (B) Three or more family residential, apartment, hotel and resort; (C) Commercial; (D) Industrial; (E) Agricultural, and (F) Conservation. Such a land classification relative to highest and best use were previously used by DLNR staff in submissions to the Board of Land and Natural Resources, eg., with the Del Monte lands submission where the "highest and best use" was listed simply as "Agriculture".

In subsection (a) of HRS 246-10 it states further that the value of land for agriculture "shall, for real property tax purposes, be the value of such land for agricultural use without regard to any value that such land might have for other purposes or uses, or to neighboring uses, as determined as provided in subsection (f) (2) of this section. Subsection (f) (2) goes on to state that in determining the value of lands for agriculture, that consideration be given to "productivity, nature of actual agricultural use, the advantages or disadvantages of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements and appurtenances, and to the opinions of persons who may be considered to have special knowledge of land values." This level of guidance is consistent with other existing subsections of HRS 171 and is the guidance now needed to be added to HRS 171-17.

In HRS 171-10 Classes of Land it states "The board of land and natural resources shall classify all public lands and in so doing to be guided by the following classifications: 1. Intensive agricultural use (first, second, and third class), 2. Special livestock use (first and second class), and 3. Pasture use (first, second, and third class), according to the relative productivity of each land class.

In HRS 171-33 Planning, generally it states in subsection (1) "Classify the land according to its use or uses as provided in this chapter"; in subsection (2) "Determine the upset price or lease rental, based upon the fair market value of the land employed to the specific uses or uses for which the disposition is being made, with due consideration for all of the terms and conditions of the disposition".

In HRS 171-34 Planning: intensive agriculture and pasture uses B. Leases or Sales in states "In addition to the requirements set forth in section 171-33, if the intended disposition is for intensive agriculture or pasture uses, the board of land and natural resources shall: "(2) Secure data or information from the land study bureau relating to such parcel; (3) Review any other pertinent information with respect to this land and the surrounding land; and (4) Based upon information obtained, prepare a written report on the land, which report shall include the following;" eg., land class, land

condition, any improvements, extent of erosion, nature of forage, extent of infestation of noxious weeds.

Clearly, similar land classifications and considerations are already in place in HRS 171. They are just currently not as clearly defined as in HRS 246-10, and are not currently considered or used by DLNR in their efforts to obtain “highest and best” or “fair market value” rents for DLNR, and this must be changed if the State is to truly support local agriculture, ranching, and aquaculture.

Appraisal Costs By placing limits on potential appraisal costs, the farmers or ranchers will help to manage their costs. When the cost of an outside appraisal would exceed the equivalent of one year’s current rent, that “prudent management,” referenced in the HRS 171-17 should be clarified to indicate that such an appraisal would be conducted by the most qualified departmental staff then available. Or, if an outside appraisal is desired by the Department, any appraisal cost above one year’s current rent would be borne by the Department. “Prudent management” shouldn’t simply be interpreted as the means of appraisal that will provide DLNR the greatest financial return without consideration of the negative or crippling financial impact on the subject farm or ranch.

When a tenant can be charged an appraisal fee equal to several years rent, with an appeal process costing many more years rent, as is currently possible under HRS 171-17, then the existing law is clearly not supportive of agriculture and needs to be changed or amended.

Conclusion Given the realities above and the additional considerations of law elsewhere in statute, the Hawaii Aquaculture and Aquaponics Association strongly supports HB 488 HD 1 as written.



Email: communications@uluponoinitiative.com

HOUSE COMMITTEE ON FINANCE
Wednesday, February 22, 2013 — 11 a.m. — Room 308

Ulupono Initiative Supports HB 488 HD1, Relating to Appraisals

Chair Luke, Vice Chairs Nishimoto & Johanson and Members of the Committees:

My name is Kyle Datta and I am General Partner of the Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally grown food, increase renewable energy, and reduce/recycle waste.

As an investor in agriculture, Ulupono believes it is important that agricultural land leases set by the State of Hawai'i equitably reflect the land's agricultural use value. This bill addresses all agricultural land with Department of Land and Natural Resources leases, not just one farm. Agricultural investments are long-term investments, and need stability in their rent costs to be viable. This measure would follow the private sector in a fair and principled way.

HB 488 HD1 revises the appraisal process so that a) agricultural land can only be valued for its agricultural uses, regardless of former uses or neighboring uses, b) the increase in land rent cannot exceed the Consumer Price Index, and c) appraisal costs borne by the lessee be limited to no more than one year's rent. In our experience negotiating agricultural leases for our agricultural and biofuels investments, these terms are similar to those offered by private sector landowners. This bill further creates a simple resolution process when an appraisal is disputed and splits the costs between the interested parties, which is similar to the private sector approach.

Ulupono has joined with a diverse group of organizations who have come together for the first time as the Local Food Coalition to support proposals designed to help grow more local food. The coalition brings together farmers, ranchers, livestock producers, investors and other organizations. The idea is that putting more local food on local plates can best be accomplished by bringing people and organizations together who can work on the entire food value chain in a systematic way.

We believe that by working together, we can help produce more local food, and support an economically strong homegrown agriculture industry that strengthens our community with fresh, healthy food. Thank you for the opportunity to testify.

Respectfully,

Kyle Datta
General Partner

Pacific Guardian Center, Mauka Tower
737 Bishop Street, Suite 2350, Honolulu, HI 96813

808 544 8960 o | 808 544 8961 f
www.uluponoinitiative.com



2029 Nuuanu Ave. #1510
Honolulu, Hawaii 96817
February 21, 2013

Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto and Rep. Aaron Ling Johanson, Vice Chairs
House Committee on Finance
415 S. Beretania St.
Honolulu, Hawaii 96813

Dear Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committees:

I am sending this testimony to express my **strong support for HB 488 HD1, "Relating to Appraisals."** As more and more of Hawaii's agricultural lands yield to development, State lands assume greater importance in Hawaii's efforts to achieve greater food self-sufficiency. DLNR's current policy of setting lease appraisals based on presumed "market values" distorts the true value of its agricultural leases and discourages the establishment and expansion of agricultural enterprises.

Private "agricultural" lots in Hawaii often sell for prices greater than their agricultural productivity would justify because in reality they are used primarily for residential or other nonagricultural purposes. If DLNR includes these prices in its calculation of "highest and best use" rates, the rates will be far above those justified by agricultural use. Further, not every lot has the same potential for agricultural production, so a fair assessment must take the characteristics of the specific lot into account. HB 488 HD1 specifies procedures, already in other sections of related statutes such as HRS 246-10, that will result in fairer valuations. It prevents excessive rent increases and avoids subjecting the lessee to exorbitant appraisal fees. These changes will allow lessees to invest in the future of their farms and ranches confidently, without fear of being priced out of business at the next lease negotiation.

If Hawaii is serious about its efforts to encourage agricultural self-sufficiency, its agencies should adopt a policy of charging the minimum rates possible to encourage greater use of available lands for agriculture and agriculture. By encouraging DLNR to set lease rates based on a more realistic assessment of each lot's agricultural value, HB 488 HD1 would be a step towards this goal. I encourage you to pass HB 488 HD1.

Thank you for the opportunity to state my opinion on this important matter.

Sincerely,



Frederick M. Mencher