

# SB 589

## RELATING TO APPRAISALS

Requires valuation of public agriculture 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.

**WTL/AGL, WAM**

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 Senate Committees on  
WATER AND LAND  
&  
AGRICULTURE**

**Thursday, January 31, 2013  
2:00 PM  
State Capitol, Conference Room 225**

**In consideration of  
SENATE BILL 589  
RELATING TO APPRAISALS**

Senate Bill 589 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.<sup>1</sup>

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

<sup>1</sup> HRS 171-43.1 does allow the Board 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

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



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SENATE COMMITTEES ON WATER & LAND/AGRICULTURE  
Thursday, January 31, 2013 — 2 p.m. — Room 229

### **Ulupono Initiative Supports SB 589, Relating to Appraisals**

Dear Chairs Solomon & Nishihara, Vice Chairs Shimabukuro & Kouchi 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. Agricultural investments are long-term investments, and need stability in their rent costs to be viable.

SB 589 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.

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



## Local Food Coalition

SENATE COMMITTEE ON WATER AND LAND  
SENATE COMMITTEE ON AGRICULTURE  
Thursday January 31, 2013 2:00 p.m. Room 229

### **SB 589 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.

Chair Solomon, Chair Nishihara, Vice Chairs and Members of the Committee:

My name is Alan Gottlieb, 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 SB 589.

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.

We appreciate this opportunity to provide testimony on this matter.



## Hawaii Cattlemen's Council, Inc.

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### SENATE COMMITTEE ON WATER & LAND SENATE COMMITTEE ON AGRICULTURE

JANUARY 31, 2013 2:00 p.m. Room 225

#### **SB 589 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.

Chair Solomon, Chair Nishihara, Vice Chairs 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 SB 589.**

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.

Farmers and ranchers often make huge investments during their lease time frame, often financing such investments based on the income and expense projections existing at the time of such financing. Substantial changes to projected land rent can alter the viability of such investments. By placing a limit on the percentage rent increase tied to the Consumer Price Index, the farmers or ranchers can gain greater certainty in their long-term financial forecasts, and in committing to farming infrastructure improvements.

Similarly, 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.



THE SENATE  
THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

COMMITTEE ON WATER AND LAND  
Senator Malama Solomon, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

COMMITTEE ON AGRICULTURE  
Senator Clarence K. Nishihara, Chair  
Senator Ronald D. Kouchi, Vice Chair

DATE: Thursday, January 31, 2013  
TIME: 2:00 p.m.  
PLACE: Conference Room 229  
State Capitol  
415 South Beretania Street

**RE: Testimony in strong support of SB 589 RELATING TO APPRAISALS**

Chairs Solomon and Nishihara, Vice Chairs Shimabukuro and Kouchi, Committee Members:

SB 589 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 clearly contrary to the State’s often 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 is the 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” rents for DLNR, and this must be changed in order to support local agriculture, ranching, and aquaculture.

**Lease Rent Increases** Farmers and ranchers often make huge investments during their lease or rental time frame, often financing such investments based on the income and expense projections existing at the time of such financing. Substantial changes to projected land rent at periodic rent re-openings can alter the viability of such investments. By placing a limit on the percentage rent increase tied to the Consumer Price Index, the farmers or ranchers can gain greater certainty in their long-term financial forecasts, and in committing to farming infrastructure improvements.

This control on rent increases would prevent the devastating doubling, tripling, or even twelve-fold increases in rent over a time period of as little as two years, as currently occurs.

**Appraisal Costs** Similarly, 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 five years rent, with an appeal process costing as much as twenty 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 SB 589 as written.

Olomana Gardens  
Glenn Martinez

Testimony on SB 589 Relating to Appraisals

**STRONT SUPPORT**

As a farmer who has been in the Agriculture / Aquaculture / Aquaponic industry for over 16 years, and served as President of Hawaii Farmers Union United and on the Board of Directors of Hawaii Aquaculture and Aquaponic Association I offer the following testimony:

Being a renter of land from the Department of Agriculture or DLNR, and having to negotiate a lease rent is daunting at best.

For the State agencies to require the farmer or rancher to compete with HIGHEST and BEST use it WRONG.

Rents and lease payments should be proportional to using the land for purpose being rented, farming.

The legislature passed laws allowing long term leases on aquaculture land, and the DLNR as made it almost impossible for the tenant to obtain the new lease with overbearing and demanding appraisals requirements.

This bill needs to be passed.

Thank you for your attention.

Glenn Martinez  
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JOSEPH RYAN, JR.,  
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January 28, 2013

TESTIMONY RE: SB 589:  
DLNR; Appraisals; Agriculture; Aquaculture; Leases; Rates  
Hearing Date/Time/Place: 1-31-2013/2:00 pm/Rm. 225

Dear Chairs of the WTL and AGR Committees:

I support this bill.

DLNR has always followed the paradigm charging lease rents to benefit the public trust and thereby justified rents based on the highest and best use—residential rent rate.

The highest and best use land rent paradigm and the high cost of labor have caused real property appraisers in the state to proclaim “agriculture is dead.”

This bill works to partly revive the agricultural industry and helps preserve open space. The bill may even preserve lands needed for ground water recharge and help coral reef preservation because storm water drains from residential development flow directly onto the reefs.

Sincerely,

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Joseph Ryan, Jr.