

SCR137

**LATE
TESTIMONY**



**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 Committee on
WATER AND LAND**

**Friday, March 21, 2014
1:00 P.M.
State Capitol, Conference Room 225**

**In consideration of
SENATE CONCURRENT RESOLUTION 137/ SENATE RESOLUTION 73
REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO
DEFINE "BEST USE" OF LANDS UNDER LEASES FOR AGRICULTURE, BASE
AGRICULTURAL LEASE RENTS ON THE VALUE OF THE LAND FOR THE
INTENDED AGRICULTURAL PRODUCTION ACTIVITY, GRANT RIGHT OF FIRST
REFUSAL TO RENEW OR EXTEND AN AGRICULTURAL LEASE OF TWENTY
YEARS OR MORE TO THE LESSEE PRIOR TO THE DISPOSITION OF THE LEASE
AT PUBLIC AUCTION, AND TRANSFER EXPEDITIOUSLY ALL OF ITS MANAGED
LANDS LEASED OR UNDER REVOCABLE PERMIT FOR AGRICULTURAL
PURPOSES TO THE DEPARTMENT OF AGRICULTURE**

Senate Concurrent Resolution 137/Senate Resolution 73 requests the Department of Land and Natural Resources (Department) to (1) define “best use” of lands under leases for agriculture, (2) base agricultural lease rents on the value of the land for the intended agricultural production activity, (3) grant right of first refusal to renew or extend an agricultural lease of twenty years or more to the lessee prior to the disposition of the lease at public auction, and (4) transfer expeditiously all of its managed lands leased or under revocable permit for agricultural purposes to the Department of Agriculture (DOA). **The Department has the following concerns regarding these resolutions.**

First, the current lease process ensures fairness, openness, and equal opportunity for the public to lease public lands. Granting certain individuals a right of first refusal to renew or extend a lease of twenty years or more prior to the disposition of a lease at public auction is counter to the Department’s and the Board of Land and Natural Resources’ (Board) fiduciary obligations to manage public lands for the benefit of all the people of the State. In particular, a “right of first

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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

refusal” is akin to an “option to renew,” which is expressly prohibited under Hawaii Revised Statutes (HRS) Section 171-36(a).

The right of refusal would prevent other agricultural operators who are not already existing tenants from obtaining a lease. The competitive auction process for leases provides a fair and open competition to acquire public land leases, resulting in long term dispositions that realize the full agricultural potential of relevant parcels of land. The right of first refusal only conveys a benefit to the current lessee, who may or may not be utilizing the land to its optimum potential.

Second, the measure requests that the fair market value of the rent be based on (1) the value of the land for intended agricultural production activity, (2) current production values from the land under consideration and from nearby similar agricultural activities as necessary, and (3) excludes land sale prices and improvements made to the land by the lessee. This valuation method would not be consistent with the Board’s fiduciary duty to establish rents based on actual agricultural production. This works against the full agricultural potential for a property, because it rewards underperformance of land and the proliferation of “gentleman farms.” Valuation issues should be left to the expertise of an independent appraiser, pursuant to HRS Section 171-17, which requires that rent be determined by either the high bid at a public auction, or during rent reopenings, by a licensed appraiser at the fair market value or rental of the land.

Third, the resolutions request that the Department define “best use” of lands under leases for agriculture or offered for lease for agricultural purposes based on agricultural production for which the lands are suited, such as ranching on pasture land, crop production in areas of suitable soil, and aquaculture or aquaponics where such facilities are appropriate. Independent, professional appraisers retained by the State to determine lease rents generally look to the character of use provision of the lease to establish the highest and best use of the land as encumbered by the lease. The character of use provisions are normally relatively narrow, such as “pasture,” “intensive agriculture,” and “aquaculture.” Accordingly, the definition proposed by the resolution appears to be unnecessary.

Finally, the Department is working with DOA to transfer lands identified pursuant to Act 90, Session Laws of Hawaii 2003. However, not all lands under lease or revocable permit for agricultural uses would be transferred to DOA. Transfers are limited to those lands previously agreed to by a memorandum of agreement between the Department and DOA. Certain urbanized lands situated in East Kapolei that are currently in agricultural use are located along the proposed rail line and adjacent to the University of Hawaii, West Oahu. These lands are slated for future development to generate revenue essential to the Department’s operations.

Thank you for the opportunity to comment on these resolutions.

NEIL ABERCROMBIE
Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

KEN H. KAKESAKO
Deputy to the Chairperson

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**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEES ON
WATER AND LAND AND AGRICULTURE**

**MARCH 21, 2014, 1:00 P.M.
ROOM 225**

**SENATE CONCURRENT RESOLUTION NO. 137/SENATE RESOLUTION 73
RELATING TO AGRICULTURAL LANDS MANAGED BY THE DEPARTMENT OF
LAND AND NATURAL RESOURCES**

Chairpersons Solomon and Nishihara and Members of the Committees:

Thank you for the opportunity to testify on Senate Concurrent Resolution No. 137 and Senate Resolution 73. This resolution requests that the Department of Land and Natural Resources define “best use” of lands under leases for agriculture, base agricultural lease rents on the value of land for the intended agricultural production activity, grant a right of first refusal to renew or extend an agricultural lease for twenty years or more to the lessee prior to disposition of the lease at public auction, and transfer expeditiously all of its managed lands or under revocable permit for agricultural purposes to the Hawaii Department of Agriculture (HDOA).

The HDOA defers to the Department of Land and Natural Resources (DLNR) regarding those sections of this measure requesting changes to Chapter 171, Hawaii Revised Statutes (HRS) and respectfully offers the following comments.

HDOA has consciously made the choice to not dictate what the tenant produces on their land. Due to the rapidly evolving options available to diversified farmers and



ranchers, and the length of the typical lease, it is the Department's desire to rather allow the tenant to produce what they feel is most advantageous given their resources and individual situation.

The Department, in accordance with section 4-158-21, Hawaii Administrative Rules (HAR), establishes lease rents by a disinterested, independent appraiser contracted by the administrator for lands to be offered for lease. The appraisal is based on unimproved land and excludes the value of any improvements made to the land by a lessee. Also, pasture lands are appraised at its specific carrying capacity to establish a fair market value rental. The Department strives to achieve reasonable fair market rentals without dictating specific agricultural activities to be performed by the lessee.

Finally, the Department continues to work with the DLNR to identify and transfer appropriate lands pursuant to Act 90, Session Laws of Hawaii 2003 as codified in Chapter 166E, HRS, entitled Non-Agricultural Park Lands.

Thank you for the opportunity to testify on this measure.



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March 21, 2014

HEARING BEFORE THE
SENATE COMMITTEES ON WATER AND LAND & AGRICULTURE

TESTIMONY ON SCR 137/SR 73

REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO DEFINE "BEST USE" OF LANDS UNDER LEASES FOR AGRICULTURE, BASE AGRICULTURAL LEASE RENTS ON THE VALUE OF THE LAND FOR THE INTENDED AGRICULTURAL PRODUCTION ACTIVITY, GRANT RIGHT OF FIRST REFUSAL TO RENEW OR EXTEND AN AGRICULTURAL LEASE OF TWENTY YEARS OR MORE TO THE LESSEE PRIOR TO THE DISPOSITION OF THE LEASE AT PUBLIC AUCTION, AND TRANSFER EXPEDITIOUSLY ALL OF ITS MANAGED LANDS LEASED OR UNDER REVOCABLE PERMIT FOR AGRICULTURAL PURPOSES TO THE DEPARTMENT OF AGRICULTURE.

Room 225
1:00 PM

Chairs Solomon and Nishihara, Vice Chairs Galuteria and Kouchi, and Members of the Committees:

I am Christopher Manfredi, President of the Hawaii Farm Bureau Federation (HFB). Organized since 1948, the HFB is comprised of 1,832 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

HFB strongly supports SCR 137/SR 73. If implemented, the changes to DLNR policies advocated by SCR 137/SR 73 will help to remedy serious problems for DLNR's agricultural lessees.

We have found that in some lease "negotiations" with DLNR, "**fair market value**" and "**best use**" are **not fair** when applied to agricultural land. In fact, the current law has had a devastating effect on farmers who want to continue to lease State land. Lease rents based on inflated land prices often exceed what a legitimate farmer or rancher can reasonably pay, based on the true value of agricultural production from the leasehold. "Best use," when interpreted as the most lucrative use of the land, is not compatible with the State's goal of promoting and encouraging local food production.

HFB strongly supports basing lease rents on the intended agricultural production activity.

The current requirement that leases be subject to public auction when they expire also discourages long-term agricultural activity. Farmers and their families who have worked hard, farmed or ranched successfully and paid their rent faithfully for many years should not lose their farms and their livelihoods simply because their leases expire and are reopened. Granting lessees of 20 years or more the right of first refusal to renew or extend agricultural leases will help to ensure that our most dedicated farmers and their families can continue to farm.

Finally, HFB agrees that State lands under lease or revocable permit for agricultural activities should be administered by the Department of Agriculture, whose mission is to preserve and promote agricultural production. We support the rapid transfer of these lands from DLNR to DOA.

Thank you for the opportunity to support SCR 137/SR 73. We urge you to pass this important resolution, and hope its provisions will be implemented.

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SCR137

Submitted on: 3/20/2014

Testimony for WTL/AGL on Mar 21, 2014 13:00PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Bob Farias	Farias Cattle Co.	Support	No

Comments: Please support agriculture in Hawaii. It is what the cloth of the culture is based on !!!!!!!!!!!

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SCR137

Submitted on: 3/20/2014

Testimony for WTL/AGL on Mar 21, 2014 13:00PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Tresler	Individual	Support	No

Comments:

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SCR137

Submitted on: 3/20/2014

Testimony for WTL/AGL on Mar 21, 2014 13:00PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
sharon	Individual	Oppose	No

Comments: BIG ISLAND _ NO!

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