

**TESTIMONY**  
**SB 1345**  
**LATE**

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GOVERNOR OF HAWAII



LAURA H. THIELEN  
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BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

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LATE TESTIMONY

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
LAURA H. THIELEN  
Chairperson

Before the Senate Committee on  
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

Friday, February 13, 2009  
3:30 PM

State Capitol, Conference Room 229

In consideration of  
SENATE BILL 1345  
RELATING TO AGRICULTURE

Senate Bill 1345 provides for fair compensation, including an automatic lease extension, when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.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) opposes the proposed legislation because it has the potential to impede the State's flexibility to set-aside portions of leased lands for public purposes.

The Department's standard lease form already 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. Similarly, Hawaii law provides that:

in the event of withdrawal of a portion [of land under lease], the board [of land and natural resources] may in its discretion allow a proportionate reduction in rent; and provided further that in the event buildings and improvements have been erected by the lessee, as permitted under the lease, on the land or portion thereof under lease affected by the cancellation or withdrawal, the board shall pay to the lessee a sum not to exceed the replacement value, less depreciation at the rates used for real property tax purposes.

To require the Department to pay the lessees' insurance costs and speculative income losses on top of the existing remedies could prove costly to the State. The Department characterizes the income losses under the bill as speculative because the bill provides no framework for evaluating such claimed losses. The bill merely states that Department compensate a lessee for "Loss of reasonably anticipated income associated with the withdrawn leased land." The phrase

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"reasonably anticipated" is vague. In establishing its losses under this language, could the lessee simply write a letter to the Department stating a dollar amount that the lessee "reasonably anticipated" losing as a result of the State's taking? Do the anticipated losses run for the duration of the lease term?

Further, the bill provides compensation for lost income as opposed to lost profits. A lessee should not be compensated for income without deducting the operating expenses required to generate that income. Finally on the compensation aspect of the bill, there is the potential for costly litigation resulting from a dispute between the State and a lessee over the calculation of losses resulting from the taking.

With respect to the automatic lease extension component of the bill, existing law already authorizes the Board of Land and Natural Resources (Board) to grant lease extensions (aggregate of initial term and extension not to exceed 55 years), and make other modifications to the lease where the partial taking of leased land results in significant economic hardship to the lessee. The law provides in part:

(d) The board, from time to time, during the term of any agriculture, intensive agriculture, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may modify or eliminate any of the [restrictions] specified in subsection (a), extend or modify the fixed rental period of the lease, or extend the term of the lease upon a showing of significant economic hardship directly caused by: . . .

(2) A taking of a portion of the area of the lease by government action by eminent domain, withdrawal, or conservation easement; provided that the portion taken shall not be less than ten per cent of the entire leased area unless otherwise approved by the board; and provided that the board determines that the lessee will not be adequately compensated pursuant to the lease provisions.

Senate Bill 1345 would apparently change existing law by making the extension automatic and increasing the total term of a lease including extension to 75 years. The Department believes such a change is unnecessary and ill-advised primarily because a lessee can already petition the Board for an extension in a taking situation under existing law. In addition, under the bill the taking of even a small portion of land, for example 100 square feet for a utility easement on a 1,000-acre lease, would result in an automatic extension for the remainder of the lease area. The Department believes no extension would be justified in such a situation. Also, passage of the bill would create a conflict with the lease extension provision under Section 171-36(d), Hawaii Revised Statutes. Finally, inclusion of the automatic lease extension provision could further interfere with the Department's ability to set leased land aside for purposes.

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