

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 House Committees on
AGRICULTURE
and
WATER & LAND**

**Monday, March 11, 2013
8:40 AM
State Capitol, Conference Room 312**

**In consideration of
SENATE BILL 5, SENATE DRAFT 1
RELATING TO PUBLIC LANDS**

Senate Bill 5, Senate Draft 1 relates to providing fair compensation when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes. **This bill represents a compromise position between the Legislature and the Department of Land and Natural Resources (Department) reached last session,¹ and, as such, the Department has no objection to its reintroduction this session.**

In the past, the Department has had serious concerns with similar types of legislation because the concept behind these measures had the potential to impede the State's flexibility to set-aside portions of state lands for state public purposes. Implementation of this measure will potentially result in the Department having to pay additional costs to pasture and agricultural lessees when lands are withdrawn for a public purpose. Additional expenses include appraisal costs to determine value of breeding livestock, paying the difference between appraised value and salvage value of such livestock, and reimbursing lessees for insurance and real property tax expenditures on lands made subject to easements.

¹ See House Bill 1617, Conference Draft 1, which was vetoed by the Governor because the bill included an unrelated measure on lease extensions that the Governor deemed objectionable.

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

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

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**TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE SENATE COMMITTEES ON AGRICULTURE AND WATER AND LAND

**MARCH 11, 2013
8:40 A.M.
ROOM 312**

**SENATE BILL NO. 5 SD 1
RELATING TO PUBLIC LANDS**

Chairpersons Wooley and Evans and Members of the Committees:

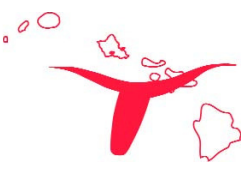
Thank you for the opportunity to testify on Senate Bill No. 5 SD1. The purpose of this bill is to provide several means of compensation in addition to rent reductions when the State withdraws, condemns, or takes public land leased for intensive agricultural or pastoral uses and renders the land unusable for the original purposes of the lease. The department supports the intent of this bill.

In the face of rising costs for agricultural inputs, our local livestock producers are finding it increasingly difficult to remain profitable. The Department is in support of any measure that will help to support our local ranchers remain successful.

The Department recognizes that language in this bill reflects a compromise that was made during the 2012 Legislative Session between the Legislature and the Department of Land and Natural Resources.

Thank you for the opportunity to present testimony.





Hawaii Cattlemen's Council, Inc.

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HOUSE COMMITTEE ON AGRICULTURE HOUSE COMMITTEE ON WATER & LAND

MARCH 11, 2013 8:40 a.m. Room 312

SB 5 SD 1 RELATING TO PUBLIC LANDS

Provides several means of compensation in addition to rent reductions when the State withdraws, condemns, or takes public land leased for intensive agricultural or pastoral uses and renders the land unusable for the original purposes of the lease.

Chair Wooley, Chair Evans, 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 5 SD1.**

Our Fair Compensation bill passed last session (HB 1617), and for the third time in four years was vetoed by the Governor. This past session we had come to terms with DLNR and they supported our position. During conference committee, an unrelated matter was added as another section in our bill, dealing with extending commercial lease terms in Hilo. DLNR could not support that and the Governor vetoed the bill. In his veto message, the Governor stated that he had no problem with our portion of the bill, and would work with us to get it passed next session.

This bill essentially enhances existing laws on fair compensation when a State Agency withdraws land or places an easement on a State lessees' lease. Chapter 171-36, 37 & 38 already provide for Fair Compensation for "... the proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease..." and for "... the value of growing crops..."

What the current law does not do and what SB 5 proposes to do is add two things to the existing law:

1. Section 2, part (a) "In the case of breeding livestock that cannot be relocated or marketed for the breeding value, the board shall pay to the lessee the difference between the appraised breeding value and the salvage value, including the cost of transportation to a market on the island on which the leased land is located."

It had been argued in testimony by others that a lessee would have plenty of notice (some said over 2 years) if their land was being withdrawn, but that is not always the case, and some may have as little as 6 months or less. What is the difference between a breeding animal and a market animal? A breeding animal has a useful life often over 10 years long, and that animal has a high cost to bring it to breeding age, or is often purchased and may be worth around \$1,000. That animal can't always be readily moved somewhere else, like some may assume. On the Mainland (and what the Federal Law

assumes) a rancher could take their breeding animal to a local livestock auction and get its market value or put it on a truck and haul it to the next state and sell or pasture it there. But that is not the case in Hawaii. What would a rancher in Hawaii do with 1,000 breeding cows in a seven year drought like we are experiencing today? There is no other pasture to move the animals to, or buyers for large numbers of breeding animals. That rancher may have to have that animal slaughtered, and may receive only \$250 for its lower meat value. That is the loss we are referring to and which we think should be included in the loss of crop definition, already a part of the current law.

2. The second thing this bill does (Section 2 part b) is reimburses a lessee for costs associated with property taxes or insurance on lands upon which an easement has been placed by the State. While some have argued this is a miniscule amount, with which we agree, but imagine adding the insult to injury to a lessee who has a major portion of their lease placed under an easement, has NO use of that land, never needs to go on that land, but needs to bear the cost of property taxes and insurance for that land. One might think that an easement would generally be a small part of a lease, for a utility or road, but that is not always the case. In the case of the Palila mitigation for the Saddle Road on the Big Island in 2001, some ranchers lost over 30% of their leased areas (over 2,000 acres) which they cannot use in any way, but still had to pay property taxes and insurance on that land with the easement. Why was an easement place, rather than withdrawing that land? We're not sure, but assume because it was expedient and did not require any subdivision.

This bill, while not retroactive for losses from past withdrawals, would apply not only to future leases but to existing leases for future takings.

There was concern during the course of the 2010 legislative session that if there was a federal project that did not have the funds to meet the State's obligation in their lease, that the Federal Project may not happen. We believe we have found provisions in Federal law that would require the Federal Government to pay for the new provisions of breeding animals as they could be considered personal property: Code of Federal Regulations, Title 49, Volume 1, Part 24, Section 24.301, pg. 244, (14). In any case under laws of Eminent Domain in our country, the laws don't require fair compensation for what the Government can afford to pay, but requires payment for the value of the taking.

What SB 5 does not do:

- It does not affect the Palila Mitigation and does not prevent the State from doing future withdrawals or placing easements. It simply requires fair compensation on any loss in value of breeding animals if the State does do a taking, in addition to their much larger exiting responsibility to pay fair compensation for assets constructed on the land.
- It is not retroactive and will not in any way affect previous takings.
- It does not give ranchers or farmers something that no other State lessee would receive in a taking or set a precedent. All State leases including commercial, industrial, resort and residential property leases are covered by Chapter 171-37 and provide for "...if any permanent improvement constructed on the land by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based on the unexpired term of the lease..."

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

onishi1-Jerry

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 09, 2013 11:01 AM
To: AGRtestimony
Cc: TABRAHAM08@GMAIL.COM
Subject: Submitted testimony for SB5 on Mar 11, 2013 08:40AM

SB5

Submitted on: 3/9/2013

Testimony for AGR/WAL on Mar 11, 2013 08:40AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
TROY ABRAHAM	Individual	Comments Only	No

Comments: i support all lands in hawaii to lower rent because it on a land belonging to a king and he wants it to be returned back

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Email: communications@uluponoinitiative.com

HOUSE COMMITTEES ON AGRICULTURE/WATER & LAND
Monday, March 11, 2013 — 8:40 a.m. — Room 312

Ulupono Initiative Supports the intent of SB 5 SD1, Relating to Public Lands

Chairs Wooley and Evans, Vice Chairs Onishi and Lowen, 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 fair compensation be provided by the State of Hawai'i to leaseholders to reflect reduction in value of the land's agricultural use when the State withdraws lands from lease or places an easement on a lease. This fundamental principle of Constitutional law is already reflected in the federal statute and this change would align at the state level.

SB 5 SD1 provides several means of compensation when the State withdraws, condemns, or takes public land leased for intensive agricultural or pastoral uses, which renders the land unusable for the original purposes of the lease. Legislation is needed because current law only allows proportionate rental rate reduction that does not consider lost value. SB5 SD1 would provide proportionate compensation for loss of permanent improvements as well as appraised lost value. The bill also would reimburse a lessee for costs associated with property taxes or insurance on lands where an easement has been placed by the State.

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





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

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March 11, 2013

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE
HOUSE COMMITTEE ON WATER & LAND

TESTIMONY ON SB 5, SD1
RELATING TO PUBLIC LANDS

Room 312
8:40 AM

Chair Wooley, Chair Evans, Vice Chair Onishi, Vice Chair Lowen, and Members of the Committees:

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 SB 5, SD1 which provides fair compensation to lessees for breeding livestock when a withdrawal or taking of leased land renders the land unusable for the lessee's original intended purposes.

When the State restricts the intended use of leased pastoral lands, the current law only requires the lessees to receive a rental rate reduction. However, a rental rate reduction does not provide fair compensation for the value of breeding stock, which must be disposed of for less than market value. For example, when DLNR restricted agricultural use to widen a highway, existing breeding cattle had to be removed and sent to slaughter for much less than their value as breeding stock, without direct compensation.

Premature and unexpected loss of leases severely impact the viability of our farmers and ranchers. Investments in infrastructure, supplies and labor are lost. Continuation of farming or ranching will require further investments that may challenge a farmer or rancher carrying loans that were used for existing infrastructure and supplies.

We respectfully request your strong support of this measure.