



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
Senate Committee on Agriculture and Environment
And

Senate Committee on Water and Land
Wednesday, February 16, 2022 at 1:00 p.m.

By

Nicholas Comerford, Dean
College of Tropical Agriculture and Human Resources

And

Michael Bruno, PhD
Provost

University of Hawai'i at Mānoa

SB 3011 – RELATING TO AGRICULTURAL LEASES

Chairs Gabbard and Inouye, Vice Chairs Nishihara and Keith-Agaran, and members of the Senate Committee on Agriculture and Environment and Senate Committee on Water and Land:

Thank you for the opportunity to provide testimony in support of the general intent of this bill, but expressing some concerns as with its companion bill HB 1993 HD1.

The University notes that agricultural land is not easily available to new farmers. The main issue outlined by SB 3011 is real, and there is a need to address how and why agricultural land in Hawai'i is leased; and how best to promote agricultural activity in the state.

It should also be noted that the problems of placing new farmers on farmland extends beyond the leasing statutes outlined here. They include the lack of capital required to get started, the lack of appropriate infrastructure for significant agricultural activity; and the degree farm size, and how we define farm size, can add to agriculture's share of the Gross State Product.

It should also be noted that given the Governor's and the legislature's desire for greater food security in Hawai'i, it's clear that this will be accomplished by bringing current and new farms into the >\$250 million to >\$350 million in sales category, not by promoting a larger number of farms <\$50 million in sales.

SB 3011, by noting that land leases by the Hawai'i Department of Agriculture (HDOA) is for the purpose of agricultural activity, and that it is expected the land should remain productive, does partially address the issue of getting state land into production. The following comments are suggestions to incorporate.

Section 1, page 1, lines 11-14. The idea of productive land versus unproductive land is first addressed. What is the guide to determine productive and unproductive land? The example of using agricultural land as a place to live and not a place to farm is explanatory. However, the language relating to the land not being farmed with an intensity or using methods that are not highly productive is not clear what the standard or goal is meant to be. This statement is confusing.

Section 1, page 2, lines 2-4. It's unclear as the highest bidder could be the farmer best able to use the land for production.

Section 3, page 3, line 17. Does the term "new leases" also apply to leases nearing expiration and possibly up for renewal; or just leases that are reopened with no expectation of renewal? The language appears to include those that could be renewed by existing lessees. Does this not recognize the work that the farmer has done during the previous lease?

Section 3, page 4, line 2. It is unclear what "prevailing market rate" is referenced from or tied to. Could this be clarified?

Section 3, Page 8, lines 3-5. The idea of "comparable productivity to new leases being issued" is confusing. In other words, does this mean if there is a problem, the farmer can't change management to something that better suits their needs if it does not meet some predetermined level of productivity? If a crop or approach is changed, how can this be met in a reasonable way? Again, how is productivity measured? Can the valuation of ecosystem services be part of the productivity calculation? Farming has to change as conditions and markets change. Is this allowable under these conditions? The idea of comparable productivity is also mentioned in other parts of the bill that should also be addressed.

In summary, we support SB 3011 in its intent, but express concerns about some concepts. We strongly support the idea that agricultural land should be put into use. Since this affects HDOA, we defer to their testimony on how this might help or hinder their leasing operation.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 3011, RELATING TO AGRICULTURAL LEASES.

BEFORE THE:

SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT AND ON
WATER AND LAND

DATE: Wednesday, February 16, 2022 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 229, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Alison S. Kato or Bryan C. Yee, Deputy Attorneys General

Chairs Gabbard and Inouye and Members of the Committees:

The Department of the Attorney General (Department) provides the following comments on this bill:

This bill proposes to modify requirements and restrictions related to the Hawaii Department of Agriculture's (DOA) dispositions of non-Agricultural Park lands to ensure that these State agricultural lands remain in agriculturally productive use.

As drafted, the added subsection (f) to section 166E-8, Hawaii Revised Statutes, contained in section 3 of this bill on page 7, line 14, through page 8, line 13, raises potential discrimination concerns. This section requires any lessee who suffers a mental or physical disability or the loss of a spouse to submit either documentation of the lessee's ability to implement the original plan of development and utilization within twelve months, or an amended plan of development and utilization for consideration by the DOA. If the DOA does not approve the amended plan, the lease shall be terminated. This documentation is required based solely on the occurrence of the disability or loss suffered by the lessee, regardless of any action being sought by the lessee.

If the Legislature's intent is only to allow this documentation in the event that a lessee seeks a change in the lease due to a mental or physical disability or the loss of a spouse, the Department recommends amending the bill to specifically limit the requirement to those circumstances. One suggestion is the addition of the following

wording to page 7, line 14: “(f) If a lessee [~~suffers~~] seeks a modification of the lease or original plan of development and utilization due to a mental or physical disability or the loss of a spouse, the lessee [~~shall~~] may submit” Also, for the reasons stated above, we recommend deleting lines 6-13 on page 8.

Thank you for the opportunity to offer comments.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

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

**FEBRUARY 16, 2022
1:00 P.M.**

VIA VIDEOCONFERENCE

**SENATE BILL NO. 3011
RELATING TO AGRICULTURAL LEASES**

Chairpersons Gabbard, Inouye, and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 3011. This bill changes certain state leasing statutes by seeking to maximize the benefit to the Hawaii Department of Agriculture (HDOA) for disposition matters and use of Non-Agricultural Parks lands and to help the State achieve its economic and food production goals. The Department has strong concerns regarding unintended adverse impacts of the proposed changes and respectfully opposes this measure.

As the primary overseer of State agricultural land leases, the Department has major concerns regarding several of the proposed amendments. In its laudable attempt to address the need to increase the availability of affordable agricultural land for new or beginning farmers, reclaim lands that are not sufficiently productive, and to recapture any windfalls from transfers, this bill creates new mandates that are not supportive or appropriate for the vast majority of the Department's lessees.

One of the Department's primary missions is to promote the growth of diversified agriculture. Unlike other state agencies, as a mission directed agency, the Department is not required to apply the "highest and best use" criteria for determining lease rent. As such, our priority is to provide the best odds for a successful farming operation, not to maximize rental income. The measure's requirement to initially require public auction of all available properties, prior to utilization any of its other options for disposition, also creates a disturbing conflict with the important discretionary authority of the Department.



This measure's new public auction requirement diminishes the Department's discretionary authority to determine the most appropriate means for offering dispositions based on the unique circumstances and characteristics of specific parcels and industry needs. The Department notes that in over two decades of leasing, it has received only one request for a public auction. Historically, our primary method of disposition is negotiation has been a sealed bid process that includes and eligibility screening for qualified applicants. Each qualified applicant is requested to submit their best offer in a sealed envelope that is opened and recorded on a specified date and time. Unlike public auctions which primarily rely on a "highest bid" criteria to determine the winning bidder, this process prevents "heat of the moment" overbidding and putting the highest bidder in a financial bind from the onset of their tenure on the land. The process enables the applicant to calculate their best offer in a far less emotional environment by objectively reviewing their business plan and making the best, financially sensible offer their plan can support. We strongly feel that this has been and continues to be the fairest method of disposition for a vast majority of our lands.

The proposed reduction of the maximum term of a lease to thirty-five years and limitation of any extension to not more than fifteen years poses serious challenges and disincentives for lessees. During the years of public discussions leading to the adoption of Act 90, (2003), which established HRS Chapter 166E, HRS, one of the most popular requests from farmers was to maximize the term of the lease. This allows and encourages a lessee to continue to maintain and invest in improvements to the land and their farms by securing long term financing necessary for capital improvements. In response to the outcry of the farming community, the Legislature, in its wisdom, decided to replicate the framework of the Public Lands law in Chapter 171, HRS, and set the maximum term of the lease at sixty-five years. The same rationale applies to lease extensions. Often, for the reasons previously listed or other reasons, legitimate requests are made for extensions longer than fifteen years if available. These requests are always vetted by the BOA for credibility, feasibility, and appropriateness, prior to approval.

While the Department agrees that speculation in affordable state land that results in a windfall for lessees must not occur. However, caution is advisable when scrutinizing the transfer of a farmer's land asset, namely leased state lands, as part of a larger sale of his farming business. The value of the leasehold asset is usually significantly less than the total sales value of the transaction yet is often mistakenly treated as synonymous. Setting limitations on a farmer's ability to profit from the sale of a farming business due to an inaccurate over-valuation of a lease transfer may ultimately discourage existing legitimate farmers from optimizing their business potential, particularly in the years toward the expiration of the lease term. Like any other business, a successful farm has far more financial value than the depreciated value of its physical assets. The true value of any business is the value of what's being produced, contracts to buy the goods or services, and its operational efficiency and expertise. This difference represents the "sweat equity" that is put into the business. The successful sale of a farming business recognizes and rewards the farmer for the hard work, time, and effort put into making it profitable. The BOA reviews and considers all of these factors when considering approval of extension requests.

While the Department appreciates the Legislature's concerns regarding underutilization of leased State lands, we believe the additional requirements and mandatory termination of lease proposed by this measure are unnecessary. The Department's periodic inspection and compliance procedures exist and are utilized precisely to determine whether lessees are complying with their plans of development and utilization, and whether significant life events such as illness or death, and natural disasters have impacted their ability to perform and maintain agricultural productivity to the satisfaction of the Department. Additionally, the Department's default and enforcement protocols also include early termination of leases if the situation warrants such action.

Building an established and successful farm takes years of planning, investments, sacrifice, and hard work. The proposed changes, as written, will adversely impact farming business operations by placing limitations that would restrict growth and overall success and disincentivize the continued investment in time, money, and effort needed to maintain farming operations properly on leases nearing their expiration.

The Department respectfully requests that this measure be held.

Thank you for the opportunity to testify.

SB-3011

Submitted on: 2/15/2022 8:58:33 AM

Testimony for AEN on 2/16/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Brian Kau	Testifying for Dept of Ag - Ag Resource Mgt Division	Oppose	Yes

Comments:

I'll be available for questions, if necessary.



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 16, 2022

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
SENATE COMMITTEE ON WATER AND LAND

TESTIMONY ON SB 3011
RELATING TO AGRICULTURAL LEASES

Conference Room 229 & via Videoconference
1:00 PM

Aloha Chairs Gabbard and Inouye, Vice Chairs Nishihara and Keith-Agaran, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 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.

The Hawaii Farm Bureau understands the intent but respectfully opposes SB 3011. We offer the following comments about our significant concerns regarding this measure which would change certain state department of agriculture leasing statutes in an attempt to increase economic and certain food production goals.

While we agree with the department having the authority to review current leases to ensure lease requirements are being met, and we certainly agree with timely notification to the department in the case of a lessee's death or inability to continue agricultural use of the lease, we cannot support other proposed amendments such as a reduction in the number of years allowed for extensions, the compensation upon transfers, and the requirement for use of current productivity standards.

We agree with the department of agriculture and the University of Hawaii that the proposed changes will adversely impact farming operations with unreasonable limitations that would restrict growth and overall success and disincentivize the continued investment in time, money, and effort needed to maintain farming operations properly on leases nearing their expiration.

There are good reasons for the more accommodating agriculture department lease terms and it is *not* in the best interest of the public for the department to convert to a "highest and best use" mandate. Because farm plans can change depending on a myriad of variables, the department should oversee but not dictate what should be grown and how.

Every lease is unique; the department's expertise and discretion should not be removed through mandatory statutes.

For example, lessees may have invested heavily in their businesses and this must be taken into consideration upon transfers and terminations. Additionally, farmers who have not had the opportunity to invest in very expensive high tunnels or other beneficial structures should not be penalized because they don't have the latest technology to meet the proposed new and very subjective standards.

Thank you for the opportunity to provide our comments and thank you for your continued support of Hawaii's agricultural community.



COMMITTEE ON AGRICULTURE AND ENVIRONMENT
Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON WATER AND LAND
Senator Lorraine R. Inouye, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

SB3011

Relating to Agricultural Leases

Wednesday, Feb 16, 2022, 1:00 PM
VIA VIDEOCONFERENCE

Chairs Gabbard and Inouye, Vice Chairs Nishihara and Keith-Agaran, and Members of the Committees,

The Hawaii Cattlemen's Council (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 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 over 750 thousand acres of land in Hawaii, or 20% of the State's total land mass. We represent the interests of Hawaii's cattle producers.

The Hawaii Cattlemen's Council **offers comments on SB3011** to update certain state leasing statutes to maximize the benefit to the State of agricultural lands and to help the State achieve its economic and food production goals.

We recognize the intent to support new farmers and ranchers and understand there is difficulty in finding suitable land for agricultural use. However, we also support established, current farmers and ranchers with a proven record of success, and would not want this bill to be a detriment to those who are on the land and need continuity in their leases to confidently produce agricultural products.

We appreciate the opportunity to testify on this measure.

Nicole Galase
Hawaii Cattlemen's Council
Managing Director



SB-3011

Submitted on: 2/15/2022 5:17:35 PM

Testimony for AEN on 2/16/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Kenani Gramberg	Testifying for Waimanalo Neighborhood Board Member	Comments	No

Comments:

Aloha, It'll be amazing to see the day agriculture is being utilized for it's actual definition with no addition. I'd really like to see Agriculture Lands in Waimānalo producing more food! Have you ever been to the Waimānalo C&C People's Open Market? There's only 2 vendors and they're not from Waimānalo. Waimānalo is an agriculture rich community, with no food to offer to the community. Who is and How often are these leasee's being inspected for pono practices on Agriculture Lands? Who's inspecting how much dwellings are going up and being rented out to non farmers? How do we get the Waimānalo agricultural businesses to create a Future Business Plan?, so we can stop importing plants, and start planting from seed to fulfill the Plans created by those particular businesses. Waimānalo has the perfect climate to perform this procedure and more. There are too many non-agricultural activities happening in Waimānalo on agricultural lands. We have so many ranches, stables, housing, trucking companies, dog parks/ facilities, fighting roosters, Golf Courses, Churches, just to name a few, on Agriculture lands in Waimānalo. Horses kept for recreation, sport, and business are not classed as an agricultural activity. Please tell me, how are these activities on Agriculture Lands providing food? My conclusion to this is to please keep agriculture lands for what it's defenition states and nothing more. Mahalo