



GOV. MSG. NO. 834

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 15, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB1345 SD1 HD1 CD1, without my approval, and with the statement of objections relating to the measure.

SB1345 SD1 HD1 CD1

A BILL FOR AN ACT
RELATING TO AGRICULTURE.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".
LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 15, 2009

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1345

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1345, entitled "A Bill for an Act Relating to Agriculture."

The purpose of this bill is to provide additional compensation and rights to lessees of agricultural and pasture lands when the Board of Land and Natural Resources withdraws a portion of the leased land or when there is a condemnation of a portion of the leased land.

This bill is objectionable because it disproportionately and inappropriately compensates these lessees of public lands above other lessees of State lands. Current law, as embodied in Chapter 171 of Hawaii Revised Statutes, already provides procedures for the withdrawal of leased lands. Lessees must be given reasonable notice of the planned withdrawal. Their lease rents must be adjusted to reflect the portion of lands withdrawn and they must be compensated for the value of any improvements on the withdrawn portion. Further, if there are crops on the land, the lands cannot be withdrawn until the crops are harvested or the State pays for the value of the crops.

This bill would require the Board of Land and Natural Resources to also compensate certain lessees for the projected or presumed income losses they would incur on the withdrawn portions of their lease and for the insurance costs they incurred. Of even greater concern, this bill would grant these lessees an automatic

STATEMENT OF OBJECTIONS
SENATE BILL NO. 1345
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extension of their lease on the remainder of the public lands they control. This automatic extension circumvents the authority of the Board of Land and Natural Resources and hinders their ability to ensure that public lands are used for the highest and best public use.

For the foregoing reasons, I am returning Senate Bill No. 1345 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written over the printed name.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that to widen Saddle
2 Road, in the county of Hawaii, the department of land and
3 natural resources established conservation easements on public
4 land leased for pasture or special livestock use. Consequently,
5 the lessee ranchers suffered serious financial losses.

6 The department of land and natural resources established
7 conservation easements on approximately six thousand acres of
8 leased lands, preventing the lessees from grazing cattle and
9 effectively depriving the lessees of their use of the land.

10 Although the department of land and natural resources reduced
11 the lease rent in proportion to the taking of the land, the
12 lessees received no other compensation. The final report on
13 discussions with affected ranchers in connection with the Saddle
14 Road realignment project prepared in response to Act 236,
15 Session Laws of Hawaii 2001, states that the United States
16 Department of Transportation Highways Division will provide
17 compensation to the existing lessees. However, according to the



1 lessees, the department of land and natural resources has taken
2 the position that because Hawaii law did not provide for any
3 compensation, none was required.

4 Despite this lack of compensation, the lessees are required
5 by their leases to maintain insurance on the land and pay taxes
6 for the land. In addition, several lessees had to reduce their
7 herd and suffered financial losses as a result of the sale of
8 their cattle. One of the long-term effects of a reduced herd is
9 that lessees cannot mitigate the long-term, fixed costs
10 associated with operating a ranch in the way they anticipated
11 when the lease was negotiated. Thus, the lessees have
12 experienced financial hardship for an extended period of time
13 that is not sufficiently mitigated by a reduction in their lease
14 rent.

15 According to some lessees, the banking industry responded
16 to the conservation easements by reducing the valuation of the
17 lease interest. Consequently, banks are not recognizing
18 leasehold interests in land as an asset.

19 The legislature believes that by providing an automatic
20 lease extension when a withdrawal, taking, or condemnation of
21 land occurs, lenders are more likely to accept leases as assets.



1 This, in turn, will assist the lessees with obtaining much
2 needed capital.

3 The purpose of this Act is to prevent similar situations as
4 the Saddle Road withdrawal from occurring in the future. This
5 Act is also intended to better provide for the viability and
6 survival of Hawaii's agricultural producers. This Act provides
7 fair compensation for lessees and an automatic lease extension
8 to protect the lessees' interest in the land when the department
9 of land and natural resources takes or condemns any portion of
10 the land, preventing a lessee from using the land as originally
11 intended.

12 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§171- Withdrawal of leased land; fair compensation;
16 lease extension. (a) Upon the withdrawal or taking of leased
17 land pursuant to section 171-37(3), which causes any portion of
18 the land to become unusable for the specific use or uses for
19 which it was intended, the lease rent shall be reduced in
20 proportion to the value of the land withdrawn or made unusable;
21 provided that if any permanent improvement constructed upon the
22 land by the lessee is destroyed or made unusable in the process



1 of the withdrawal or taking, the proportionate value thereof
2 shall be paid to the lessee based upon the unexpired term of the
3 lease. No withdrawal or taking shall apply to land that is
4 under cultivation until the crops are harvested, unless the
5 board pays the lessee the value of the crops. Upon a
6 withdrawal, any person with a long-term lease shall be
7 compensated for the present value of all permanent improvements
8 in place at the time of the withdrawal that were legally
9 constructed upon the land by the lessee of the leased land being
10 withdrawn. In the case of tree crops, as defined in section
11 171-37, the board shall pay to the lessee the residual value of
12 the trees taken and, if there are unharvested crops, the value
13 of the crops.

14 (b) In addition to compensation received pursuant to
15 subsection (a) or section 171-38, a lessee shall be entitled to
16 compensation for costs attributable to the diminished use of the
17 leased land, including but not limited to:

- 18 (1) Reimbursement for any insurance costs associated with
19 the withdrawn leased land; and
20 (2) Loss of reasonably anticipated income associated with
21 the withdrawn leased land.



1 (c) In addition to any compensation received pursuant to
2 subsections (a) and (b), upon request by the lessee, the board
3 shall extend a lease subject to a withdrawal or taking, pursuant
4 to section 171-37, or a condemnation, pursuant to section
5 171-38, for not more than the number of years remaining in the
6 original lease. The extended lease shall consist of terms and
7 conditions consistent with applicable law."

8 SECTION 3. Section 171-37, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§171-37 Lease restrictions; intensive agricultural and**
11 **pasture uses.** In addition to the restrictions provided in
12 section 171-36, the following restrictions shall apply to all
13 leases for intensive agricultural and pasture uses:

14 (1) The lease term shall ~~[be]~~ not be less than fifteen
15 years nor more than thirty-five years, except that if
16 the type of disposition requires the lessee to occupy
17 the premises as the lessee's own personal residence,
18 it may be longer than thirty-five years, or except as
19 provided in subsection 171- (c), but not in excess of
20 seventy-five years, and except in the case of a tree-
21 crop orchard lease the term of which shall not be in
22 excess of forty-five years.



1 (2) If the land being leased is not immediately productive
2 and requires extensive expenditures for clearing,
3 conditioning of the soil, the securing of water, the
4 planting of grasses, or the construction of
5 improvements, as the result of which a longer term is
6 necessary to amortize the lessee's investment, then
7 the lease term may be longer than thirty-five years,
8 but not in excess of fifty-five years.

9 (3) The land leased hereunder, or any portion thereof,
10 shall be subject to withdrawal by the board [~~of land~~
11 ~~and natural resources~~] at any time during the term of
12 the lease with reasonable notice and [~~without~~]
13 compensation, [~~except as provided herein,~~] as provided
14 in section 171- , for public uses or purposes,
15 including residential, commercial, industrial, or
16 resort developments, for constructing new roads or
17 extensions, or changes in line or grade of existing
18 roads, for rights-of-way and easements of all kinds,
19 and shall be subject to the right of the board to
20 remove soil, rock, or gravel as may be necessary for
21 the construction of roads and rights-of-way within or
22 without the demised premises[, ~~provided that upon the~~



1 ~~withdrawal, or upon the taking which causes any~~
2 ~~portion of the land originally demised to become~~
3 ~~unusable for the specific use or uses for which it was~~
4 ~~demised, the rent shall be reduced in proportion to~~
5 ~~the value of the land withdrawn or made unusable, and~~
6 ~~if any permanent improvement constructed upon the land~~
7 ~~by the lessee is destroyed or made unusable in the~~
8 ~~process of the withdrawal or taking, the proportionate~~
9 ~~value thereof shall be paid based upon the unexpired~~
10 ~~term of the lease; provided further that no withdrawal~~
11 ~~or taking shall be had as to those portions of the~~
12 ~~land which are then under cultivation with crops until~~
13 ~~the crops are harvested, unless the board pays to the~~
14 ~~lessee the value of the crops; and provided further~~
15 ~~that upon withdrawal any person with a long term lease~~
16 ~~shall be compensated for the present value of all~~
17 ~~permanent improvements in place at the time of~~
18 ~~withdrawal that were legally constructed upon the land~~
19 ~~by the lessee to the leased land being withdrawn. In~~
20 ~~the case of tree crops, the board shall pay to the~~
21 ~~lessee the residual value of the trees taken and, if~~



1 ~~there are unharvested crops, the value of the crops~~
2 ~~also].~~

3 "Tree-crop", as used in this section, shall be exclusive of
4 papaya and banana."

5 SECTION 4. Section 171-38, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§171-38 Condemnation of leases.** The lease shall provide
8 that whenever a portion of the public land under lease is
9 condemned for public purposes by the State, or any county or
10 city and county, or any other governmental agency or
11 subdivision, the rental shall be reduced in proportion to the
12 value of the portion of the premises condemned, and the lessee
13 shall be entitled to receive from the condemning authority:

14 (1) ~~[the]~~ The value of growing crops, if any, which the
15 lessee is not permitted to harvest; and

16 (2) ~~[the]~~ The proportionate value of the lessee's
17 permanent improvements so taken in the proportion that
18 it bears to the unexpired term of the lease~~[-provided~~
19 ~~that the]~~.

20 The lessee ~~[may]~~, in the alternative, may remove and relocate
21 the lessee's improvements to the remainder of the lands occupied
22 by the lessee. The foregoing rights of the lessee shall not be



1 exclusive of any other to which the lessee may be entitled by
2 law ~~[]~~, including those rights established in section 171- .
3 Where the portion so taken renders the remainder unsuitable for
4 the uses for which the land was leased, the lessee shall have
5 the option to surrender the lessee's lease and be discharged for
6 any further liability therefor; provided that the lessee may
7 remove the lessee's permanent improvements within ~~[such]~~ a
8 reasonable period allowed by the board ~~[of land and natural~~
9 ~~resources]~~ ."

10 SECTION 5. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun, before its effective date.

13 SECTION 6. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 7. This Act shall take effect upon its approval.

