

JAN 27 2010

S.B. NO. 2951

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
18 lessees, the department of land and natural resources has taken



1 the position that because Hawaii law did not provide for any
2 compensation, none was required.

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

14 The purpose of this Act is to prevent similar situations as
15 the Saddle Road withdrawal from occurring in the future. This
16 Act is also intended to better provide for the viability and
17 survival of Hawaii's agricultural producers. This Act provides
18 fair compensation for lessees when the department of land and
19 natural resources takes or condemns any portion of the land,
20 preventing a lessee from using the land as originally intended.



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

"§171- Withdrawal of leased land; fair compensation; lease extension. (a) Upon the withdrawal or taking of leased land pursuant to section 171-37(3), which causes any portion of the land to become unusable for the specific use or uses for which it was intended, the lease rent shall be reduced in proportion to the value of the land withdrawn or made unusable; provided that if any permanent improvement made to or constructed upon 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 to the lessee based upon the unexpired term of the lease. No withdrawal or taking shall apply to land that is under cultivation until the crops are harvested, unless the board pays the lessee the value of the crops. Upon a withdrawal, any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of the withdrawal that were legally made to or constructed upon the land by the lessee of the leased land being withdrawn. In the case of tree crops, as defined in section 171-37, the board shall pay to the lessee the



1 residual value of the trees taken and, if there are unharvested
2 crops, the value of the crops. In the case of breeding
3 livestock that cannot be relocated or marketed for the breeding
4 value, the board shall pay to the lessee the difference of the
5 appraised breeding value and the salvage value, including the
6 cost of transportation to market.

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

11 (1) Reimbursement for any insurance costs required by the
12 board to be maintained on lands subject to easements,
13 placed upon the land subsequent to the original lease,
14 which prevent the lessee from using the lands for the
15 original intended use; and

16 (2) Reimbursement of property taxes paid by the lessee on
17 lands subject to easements, placed upon the land
18 subsequent to the original lease, which prevent the
19 lessee from using the lands for the original intended
20 use."

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



1 **"§171-37 Lease restrictions; intensive agricultural and**
2 **pasture uses.** In addition to the restrictions provided in
3 section 171-36, the following restrictions shall apply to all
4 leases for intensive agricultural and pasture uses:

5 (1) The lease term shall [~~be~~] not be less than fifteen
6 years nor more than thirty-five years, except that if
7 the type of disposition requires the lessee to occupy
8 the premises as the lessee's own personal residence,
9 [~~it~~] the lease term may be longer than thirty-five
10 years[~~7~~]; provided that the lease term shall not be in
11 excess of seventy-five years, [~~and~~] except in the case
12 of a tree-crop orchard lease the term of which shall
13 not be in excess of forty-five years.

14 (2) If the land being leased is not immediately productive
15 and requires extensive expenditures for clearing,
16 conditioning of the soil, the securing of water, the
17 planting of grasses, or the construction of
18 improvements, as the result of which a longer term is
19 necessary to amortize the lessee's investment, then
20 the lease term may be longer than thirty-five years,
21 but not in excess of fifty-five years.



(3) The land leased hereunder, or any portion thereof, shall be subject to withdrawal by the board ~~[of land and natural resources]~~ at any time during the term of the lease with reasonable notice and ~~[without]~~ compensation, ~~[except as provided herein,]~~ as provided in section 171- , for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises~~[-, provided that upon the withdrawal, or upon the taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon 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 upon the unexpired term of the lease; provided further that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of the crops; and provided further that upon withdrawal any person with a long term lease shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee to the leased land being withdrawn. In the case of tree crops, the board shall pay to the lessee the residual value of the trees taken and, if there are unharvested crops, the value of the crops also].~~

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

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

"§171-38 Condemnation of leases. The lease shall provide that whenever a portion of the public land under lease is condemned for public purposes by the State, or any county or



1 city and county, or any other governmental agency or
2 subdivision, the rental shall be reduced in proportion to the
3 value of the portion of the premises condemned, and the lessee
4 shall be entitled to receive from the condemning authority:

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

7 (2) ~~[the]~~ The proportionate value of the lessee's
8 permanent improvements so taken in the proportion that
9 it bears to the unexpired term of the lease~~[-provided~~
10 ~~that the]~~.

11 The lessee ~~[may]~~, in the alternative, may remove and relocate
12 the lessee's improvements to the remainder of the lands occupied
13 by the lessee. The foregoing rights of the lessee shall not be
14 exclusive of any other to which the lessee may be entitled by
15 law~~[-]~~, including those rights established in section 171- .

16 Where the portion so taken renders the remainder unsuitable for
17 the uses for which the land was leased, the lessee shall have
18 the option to surrender the lessee's lease and be discharged for
19 any further liability therefor; provided that the lessee may
20 remove the lessee's permanent improvements within ~~[such]~~ a
21 reasonable period allowed by the board ~~[of land and natural~~
22 ~~resources]~~."



1 SECTION 5. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

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

INTRODUCED BY: 



Report Title:

Public Lands; Leasehold; Agricultural Uses; Condemnation;
Withdrawal; Compensation

Description:

Provides for fair compensation when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.

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