

JAN 20 2012

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# A BILL FOR AN ACT

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RELATING TO PUBLIC LANDS.

**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 Chapter 171, Hawaii Revised Statutes, provides for rent  
4 reductions if the land withdrawn causes the land to become  
5 unusable for the specific use or uses for which it was  
6 originally leased. However, the law provides no other method of  
7 compensation. Despite this lack of compensation, the lessees  
8 are required by their leases to maintain insurance on the land  
9 and pay taxes for the land they cannot use for the specific  
10 purpose for which it was originally leased.

11 In addition, several lessees had to reduce their herd and  
12 suffered financial losses as a result of the sale of their  
13 cattle. One of the long-term effects of a reduced herd is that  
14 lessees cannot mitigate the long-term, fixed costs associated  
15 with operating a ranch in the way they anticipated when the  
16 lease was negotiated. Thus, the lessees have experienced  
17 financial hardship for an extended period of time that is not  
18 sufficiently mitigated by a reduction in their lease rent.

19 S.B. No. 2951, C.D. 1, Regular Session of 2010, a measure  
20 that attempted to address this issue by providing fair  
21 compensation when leased public land for agricultural or  
22 pastoral uses is withdrawn, condemned, or taken for public



1 purposes, passed the legislature but was vetoed by Governor  
2 Lingle on the grounds that the bill "disproportionately and  
3 inappropriately compensates these lessees of public lands above  
4 other lessees of State lands." In testimony opposing the  
5 measure, the department of land and natural resources posited  
6 that rent reduction under existing law is sufficiently fair, and  
7 that easements do not prevent the lessee from making any  
8 beneficial use of the land even when it prevents them using the  
9 land for its original intended purpose. However, the  
10 legislature believes that rent reduction is insufficient,  
11 especially where the lessor fails to recognize that the law is  
12 designed to take into account the lessee's original intended  
13 purpose for leasing the land, and finds that this Act is  
14 necessary to provide more equitable relief to lessees of public  
15 lands in partial takings or condemnations where the lessee is  
16 prevented from using the lands as originally intended.

17 The purpose of this Act is to provide fair compensation to  
18 lessees when a withdrawal or taking of leased land renders the  
19 land unusable for the lessee's original intended purpose.

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



1       "§171-       Withdrawal of leased land; fair compensation;  
2   lease extension.   (a)   Upon a withdrawal or taking of leased  
3   land pursuant to section 171-37(3) that causes any portion of  
4   the land to become unusable for the specific use or uses for  
5   which it was leased, the lease rent shall be reduced in  
6   proportion to the value of the land withdrawn or made unusable;  
7   provided that if any permanent improvement made to or  
8   constructed upon the land by the lessee is destroyed or made  
9   unusable in the process of the withdrawal or taking, the  
10   proportionate value thereof shall be paid to the lessee based  
11   upon the unexpired term of the lease. No land that is under  
12   cultivation shall be withdrawn or taken until the crops are  
13   harvested, unless the board pays the lessee the value of the  
14   crops. Upon a withdrawal, any person with a long-term lease  
15   shall be compensated for the present value of all permanent  
16   improvements in place at the time of the withdrawal that were  
17   legally made to or constructed upon the land by the lessee of  
18   the leased land being withdrawn. In the case of tree-crops, as  
19   defined in section 171-37, the board shall pay to the lessee the  
20   residual value of the trees taken and, if there are unharvested  
21   crops, the value of the crops. In the case of breeding  
22   livestock that cannot be relocated or marketed for the breeding



1 value, the board shall pay to the lessee the difference between  
2 the appraised breeding value and the salvage value, including  
3 the cost of transportation to market.

4 (b) In addition to compensation received under subsection  
5 (a) or section 171-38, a lessee shall be entitled to  
6 compensation for costs attributable to the diminished use of the  
7 leased land, including but not limited to reimbursement for the  
8 cost of any insurance required by the board to be maintained, or  
9 property tax paid by the lessee; provided that a lessee of land  
10 subject to easements shall be entitled to compensation under  
11 this subsection only if the easements are placed upon the land  
12 subsequent to the original lease and prevent the lessee from  
13 using the land for the original intended use."

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

16 **"§171-37 Lease restrictions; intensive agricultural and**  
17 **pasture uses.** In addition to the restrictions provided in  
18 section 171-36, the following restrictions shall apply to all  
19 leases for intensive agricultural and pasture uses:

- 20 (1) The lease term shall ~~[be]~~ not be less than fifteen  
21 years nor more than thirty-five years, except that if  
22 the type of disposition requires the lessee to occupy



1 the premises as the lessee's own personal residence,  
2 ~~[it]~~ the lease term may be longer than thirty-five  
3 years ~~[, but]~~; provided that the lease term shall not  
4 be in excess of seventy-five years, ~~[and]~~ except in  
5 the case of a tree-crop orchard lease the term of  
6 which shall not be in excess of forty-five years.

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

15 (3) The land leased hereunder, or any portion thereof,  
16 shall be subject to withdrawal by the board ~~[of land~~  
17 ~~and natural resources]~~ at any time during the term of  
18 the lease with reasonable notice and ~~[without]~~  
19 compensation, ~~[except as provided herein,]~~ as provided  
20 in section 171- , for public uses or purposes,  
21 including residential, commercial, industrial, or  
22 resort developments, for constructing new roads or



1 extensions, or changes in line or grade of existing  
2 roads, for rights-of-way and easements of all kinds,  
3 and shall be subject to the right of the board to  
4 remove soil, rock, or gravel as may be necessary for  
5 the construction of roads and rights-of-way within or  
6 without the demised premises[~~; provided that upon the~~  
7 ~~withdrawal, or upon the taking which causes any~~  
8 ~~portion of the land originally demised to become~~  
9 ~~unusable for the specific use or uses for which it was~~  
10 ~~demised, the rent shall be reduced in proportion to~~  
11 ~~the value of the land withdrawn or made unusable, and~~  
12 ~~if any permanent improvement constructed upon the land~~  
13 ~~by the lessee is destroyed or made unusable in the~~  
14 ~~process of the withdrawal or taking, the proportionate~~  
15 ~~value thereof shall be paid based upon the unexpired~~  
16 ~~term of the lease; provided further that no withdrawal~~  
17 ~~or taking shall be had as to those portions of the~~  
18 ~~land which are then under cultivation with crops until~~  
19 ~~the crops are harvested, unless the board pays to the~~  
20 ~~lessee the value of the crops; and provided further~~  
21 ~~that upon withdrawal any person with a long term lease~~  
22 ~~shall be compensated for the present value of all~~



1       ~~permanent improvements in place at the time of~~  
2       ~~withdrawal that were legally constructed upon the land~~  
3       ~~by the lessee to the leased land being withdrawn. In~~  
4       ~~the case of tree crops, the board shall pay to the~~  
5       ~~lessee the residual value of the trees taken and, if~~  
6       ~~there are unharvested crops, the value of the crops~~  
7       ~~also].~~

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

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

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

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

21       (2) ~~[the]~~ The proportionate value of the lessee's  
22       permanent improvements so taken in the proportion that





1           it bears to the unexpired term of the lease[~~—provided~~  
2           ~~that—the~~].

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

8 Where the portion so taken renders the remainder unsuitable for  
9 the uses for which the land was leased, the lessee shall have  
10 the option to surrender the lessee's lease and be discharged for  
11 any further liability therefor; provided that the lessee may  
12 remove the lessee's permanent improvements within [such] a  
13 reasonable period allowed by the board [~~of land and natural~~  
14 ~~resources~~]."

15           SECTION 5. This Act does not affect rights and duties that  
16   matured, penalties that were incurred, and proceedings that were  
17   begun before its effective date.

18           SECTION 6. Statutory material to be repealed is bracketed  
19   and stricken. New statutory material is underscored.

**20** SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY:

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# S.B. NO. 2207

**Report Title:**

Leased Public Lands; 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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