

JAN 17 2013

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. The legislature finds that the department of
2 land and natural resources established conservation easements on
3 public land originally leased for pasture or special livestock
4 use in order to widen Saddle road in the county of Hawaii. As a
5 result, 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 thereby preventing the lessees from grazing cattle
9 and 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 Federal Highways Administration
17 will provide compensation to the existing lessees. However,
18 according to the lessees, the department of land and natural



1 resources has taken the position that because Hawaii law did not
2 provide for any 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4 reductions if the land withdrawn causes the land to become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. The law provides no other method of
7 compensation. However, the lessees are still required by their
8 leases to maintain insurance on the land and pay taxes for the
9 land they cannot use for the specific purpose for which it was
10 originally leased.

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

19 S.B. No. 2951, S.D. 2, H.D. 2, C.D. 1, regular session of
20 2010, 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. This measure passed the legislature, but was vetoed
2 by the governor on the grounds that the bill "disproportionately
3 and inappropriately compensates these lessees of public lands
4 above 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 from using
9 the land for its original intended purpose. However, the
10 legislature believes that rent reduction is insufficient,
11 especially if 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 lessees' original intended purposes.

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 or taking of leased land; fair
2 compensation. (a) Upon a withdrawal or taking of leased land
3 pursuant to section 171-37(3) that causes any portion of the
4 land to become unusable for the specific use or uses for which
5 it was leased, the lease rent shall be reduced in proportion to
6 the value of the land withdrawn or made unusable; provided that
7 if any permanent improvement made to or constructed upon the
8 land by the lessee is destroyed or made unusable in the process
9 of the withdrawal or taking, the proportionate value thereof
10 shall be paid to the lessee based upon the unexpired term of the
11 lease. No land that is under cultivation shall be withdrawn or
12 taken until the crops are harvested, unless the board pays the
13 lessee the value of the crops.

14 Upon a withdrawal, any person with a long-term lease shall
15 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.

19 In the case of tree-crops, as defined in section 171-37,
20 the board shall pay to the lessee the residual value of the
21 trees taken and, if there are unharvested crops, the value of
22 the crops.



1 In the case of breeding livestock that cannot be relocated
2 or marketed for the breeding value, the board shall pay to the
3 lessee the difference between the appraised breeding value and
4 the salvage value, including the cost of transportation to a
5 market on the island on which the leased land is located. If
6 there is disagreement between the board and the lessee as to the
7 number of breeding livestock that cannot be relocated or
8 marketed for breeding value, the issue shall be submitted to the
9 department of agriculture to make a determination, which shall
10 be final. The appraised breeding value shall be the fair market
11 value of the livestock, as opposed to net present value, at the
12 time the board approves the withdrawal or taking of a portion or
13 all of the leased land. The fair market value shall be
14 determined by:

15 (1) An employee of the department of agriculture qualified
16 to appraise livestock; or

17 (2) A disinterested livestock appraiser whose services
18 shall be contracted for by the board;

19 and the lessee shall be promptly notified of the determination;
20 provided that should the lessee fail to agree upon the fair
21 market value, the lessee may appoint the lessee's own livestock
22 appraiser who together with the board's appraiser shall appoint



1 a third appraiser and the fair market value shall be determined
2 by arbitration as provided in chapter 658A. The lessee shall
3 pay for the lessee's own livestock appraiser, the board shall
4 pay for the board's livestock appraiser, and the cost of the
5 third livestock appraiser shall be borne equally by the lessee
6 and the board. Whenever more than one livestock appraiser is
7 appointed, each shall prepare and submit an independent
8 appraisal report.

9 (b) In addition to compensation received under subsection
10 (a) or section 171-38, a lessee shall be entitled to
11 compensation for costs attributable to the diminished use of the
12 leased land, including reimbursement for the cost of any
13 insurance required by the board to be maintained, or property
14 tax paid by the lessee on the portion of the leased land
15 withdrawn or taken; provided that a lessee of land subject to
16 easements shall be entitled to compensation under this
17 subsection only if the easements are placed upon the land
18 subsequent to the original lease and prevent the lessee from
19 using the land for the original intended use."

20 SECTION 3. Section 171-37, Hawaii Revised Statutes, is
21 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[~~, but~~]; provided that the lease term shall not
11 be in excess of seventy-five years, [~~and~~] except that
12 in the case of a tree-crop orchard lease, the term [~~of~~
13 ~~which~~] shall 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[~~,~~]; and



(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~~



1 ~~value thereof shall be paid based upon the unexpired~~
2 ~~term of the lease; provided further that no withdrawal~~
3 ~~or taking shall be had as to those portions of the~~
4 ~~land which are then under cultivation with crops until~~
5 ~~the crops are harvested, unless the board pays to the~~
6 ~~lessee the value of the crops; and provided further~~
7 ~~that upon withdrawal any person with a long-term lease~~
8 ~~shall be compensated for the present value of all~~
9 ~~permanent improvements in place at the time of~~
10 ~~withdrawal that were legally constructed upon the land~~
11 ~~by the lessee to the leased land being withdrawn. In~~
12 ~~the case of tree crops, the board shall pay to the~~
13 ~~lessee the residual value of the trees taken and, if~~
14 ~~there are unharvested crops, the value of the crops~~
15 ~~also].~~

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

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

20 **"§171-38 Condemnation of leases.** The lease shall provide
21 that whenever a portion of the public land under lease is
22 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]~~ that
6 the 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]~~."



S.B. NO. 5

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: _____

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S.B. NO. 5

Report Title:

Leased Public Lands for Intensive Agricultural or Pastoral Uses;
Withdrawal; Condemnation; Taking; Compensation

Description:

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.

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