
A BILL FOR AN ACT

RELATING TO AUTHORIZING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO LEASE PASTURE LANDS ON TERMS THAT PROMOTE COLLABORATIVE BENEFICIAL USE FOR FORESTRY, WILDLIFE, RECREATIONAL, AND FOOD PRODUCTION PURPOSES.

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

1 SECTION 1. Many state pasture lessees have requested the
2 department of land and natural resources to transfer their
3 leases to the department of agriculture for management because
4 the department of agriculture has greater flexibility under
5 chapter 166E, Hawaii Revised Statutes, to amend, extend, and
6 issue new leases by negotiation. The department of land and
7 natural resources has not acted on the requests of its pasture
8 lessees because of the high natural resource value of certain
9 pasture lands, their proximity to forest reserves, or their
10 importance in providing access to other public lands for hunting
11 or public recreation purposes.

12 Furthermore, the perceived need to transfer pasture leases
13 to the department of agriculture can be relieved by providing
14 the department of land and natural resources with statutory



1 powers similar to those exercised by the department of
2 agriculture in the management of its leases.

3 Finally, positive advancement in carbon sequestration
4 challenges, wildlife management, wildfire protection and forest
5 health concerns can be best managed through mutually beneficial
6 practices with ranching, wildlife protection, and native forest
7 restoration.

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

11 "§171- Transfer of land; priority use. (a)
12 Notwithstanding any law to the contrary, if at any time land
13 transferred pursuant to this chapter is in productive
14 agricultural use under the department of agriculture's authority
15 and the department seeks to alter or convert the existing use to
16 its reserved uses or priorities, preference to the department's
17 use shall be given; provided that:

18 (1) Prior to the alteration or conversion, the department
19 has completed a plan of utilization or project plan
20 for its intended use that is approved by the board;



- 1 (2) Prior to the alteration or conversion, the department
2 has secured sufficient funding to successfully
3 implement the plan;
- 4 (3) The department shall be solely responsible for all
5 costs for identification, mapping, designation, and
6 subdivision of the land or any portions thereof that
7 is required for implementation of its approved plan;
- 8 (4) The department has given prior written notice to the
9 department of agriculture and the lessee no later than
10 one year prior to alteration or conversion; provided
11 that the lessee shall be responsible for the costs of
12 relocating its operations ordinarily associated with
13 reconfiguring existing operations to accommodate the
14 loss of areas removed for the benefit of the
15 department;
- 16 (5) The department shall return the land to agricultural
17 practices if the alteration or conversion is not
18 completed within the timeframe specified in the
19 approved plan;
- 20 (6) The lessee shall be justly compensated by rent credit
21 for interruptions of its business operations as a



1 result of non-ranching activities on the leased
2 premises, including but not limited to:
3 (A) Managing public access; and
4 (B) Allowances for public hunting;
5 provided that the rent credits shall be determined at
6 the time of the appraisal and may be amended as
7 needed;
8 (7) The State shall indemnify any lessee required by the
9 department to provide certain other activities and
10 provide the lessee with proof of indemnity to a degree
11 acceptable with the level of exposure; and
12 (8) The department may not encumber the property nor any
13 part of its management to another entity without
14 concurrence of the lessee.
15 (b) In the event that the management of lands are
16 disputed, the board of land and natural resources shall
17 establish a third-party advisory committee prior to any
18 disposition or transfer of the lands. The third-party advisory
19 committee shall consist of members from the following:
20 (1) The department;
21 (2) The department of agriculture;

- 1 (3) An organization who represents the interests of cattle
- 2 producers in the State;
- 3 (4) An organization who represents the interests of
- 4 agricultural producers in the State;
- 5 (5) An organization who represents the conservation
- 6 districts in the State;
- 7 (6) An organization who represents the watershed
- 8 partnerships in the State; and
- 9 (7) The University of Hawaii college of tropical
- 10 agriculture and human resources.
- 11 (c) The third-party advisory committee established
- 12 pursuant to subsection (b) shall review the disputed lands
- 13 proposed for disposition or transfer and assess the resources
- 14 values according to the following criteria:
- 15 (1) Percentage of the land that is growing grass, invasive
- 16 tree, and native trees;
- 17 (2) Presence of endangered species;
- 18 (3) Presence of access, trails, and hunting resources;
- 19 (4) Traditional and customary native Hawaiian practices
- 20 using a Ka Pa‘akai analysis;
- 21 (5) Food production for local consumption and export;



1 (6) Proposed rent, including methodology and statutory
2 justification; and

3 (7) Proposed measures to protect public trust values.

4 The third-party advisory committee shall submit findings to the
5 board and the board of agriculture for review and consideration
6 before the approval of any disposition or transfer of disputed
7 lands.

8 (d) For the purposes of this section, "disputed lands"
9 means state lands managed by the department of land and natural
10 resources that may qualify for transfer to the department of
11 agriculture under Act 90, Session Laws of Hawaii 2003, but have
12 not been transferred because of a disagreement between the
13 department of land and natural resources and department of
14 agriculture as to whether or not the land should be
15 transferred."

16 SECTION 3. Section 171-36, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§171-36 Lease restrictions; generally.** (a) Except as
19 otherwise provided, the following restrictions shall apply to
20 all leases:

21 (1) Options for renewal of terms are prohibited;



- 1 (2) No lease shall be for a longer term than sixty-five
2 years, except in the case of a residential leasehold,
3 which may provide for an initial term of fifty-five
4 years with the privilege of extension to meet the
5 requirements of the Federal Housing Administration,
6 Federal National Mortgage Association, Federal Land
7 Bank of Berkeley, Federal Intermediate Credit Bank of
8 Berkeley, Berkeley Bank for Cooperatives, or
9 Department of Veterans Affairs requirements; provided
10 that the aggregate of the initial term and extension
11 shall in no event exceed seventy-five years;
- 12 (3) No lease shall be made for any land under a lease
13 which has more than two years to run;
- 14 (4) No lease shall be made to any person who is in arrears
15 in the payment of taxes, rents, or other obligations
16 owed to the State or any county;
- 17 (5) No lease shall be transferable or assignable, except
18 by devise, bequest, or intestate succession; provided
19 that with the approval of the board, the assignment
20 and transfer of a lease or unit thereof may be made in
21 accordance with current industry standards, as



1 determined by the board; provided further that prior
2 to the approval of any assignment of lease, the board
3 shall have the right to review and approve the
4 consideration to be paid by the assignee and may
5 condition its consent to the assignment of the lease
6 on payment by the lessee of a premium based on the
7 amount by which the consideration for the assignment,
8 whether by cash, credit, or otherwise, exceeds the
9 depreciated cost of improvements and trade fixtures
10 being transferred to the assignee; provided further
11 that with respect to state agricultural leases, in the
12 event of foreclosure or sale, the premium, if any,
13 shall be assessed only after the encumbrances of
14 record and any other advances made by the holder of a
15 security interest are paid;

- 16 (6) The lessee shall not sublet the whole or any part of
17 the demised premises, except with the approval of the
18 board; provided that prior to the approval, the board
19 shall have the right to review and approve the rent to
20 be charged to the sublessee; provided further that in
21 the case where the lessee is required to pay rent



1 based on a percentage of its gross receipts, the
2 receipts of the sublessee shall be included as part of
3 the lessee's gross receipts; provided further that the
4 board shall have the right to review and, if
5 necessary, revise the rent of the demised premises
6 based upon the rental rate charged to the sublessee
7 including the percentage rent, if applicable, and
8 provided that the rent may not be revised downward;

9 (7) The lease shall be for a specific use or uses and
10 shall not include waste lands, unless it is
11 impractical to provide otherwise;

12 (8) Mineral and metallic rights and surface and ground
13 water shall be reserved to the State; and

14 (9) No lease of public lands, including submerged lands,
15 or any extension of any lease of public lands shall be
16 issued by the State to any person to construct, use,
17 or maintain a sunbathing or swimming pier or to use
18 the lands for those purposes, unless the lease, or any
19 extension thereof, contains provisions permitting the
20 general public to use the pier facilities on the
21 public lands and requiring that a sign or signs be



1 placed on the pier, clearly visible to the public,
2 that indicates the public's right to the use of the
3 pier. The board, at the earliest practicable date,
4 and where legally possible, shall cause all existing
5 leases to be amended to conform to this paragraph.

6 The term "lease", for the purposes of this paragraph,
7 includes month-to-month rental agreements and similar
8 tenancies.

9 (b) The board, from time to time, upon the issuance or
10 during the term of any intensive agricultural, aquaculture,
11 commercial, mariculture, special livestock, pasture, or
12 industrial lease, may:

- 13 (1) Modify or eliminate any of the restrictions specified
14 in subsection (a);
- 15 (2) Extend or modify the fixed rental period of the lease;
16 provided that the aggregate of the initial term and
17 any extension granted shall not exceed sixty-five
18 years; or
- 19 (3) Extend the term of the lease,

20 to the extent necessary to qualify the lease for mortgage
21 lending or guaranty purposes with any federal mortgage lending



1 agency, to qualify the lessee for any state or private lending
2 institution loan, private loan guaranteed by the State, or any
3 loan in which the State and any private lender participates, or
4 to amortize the cost of substantial improvements to the demised
5 premises that are paid for by the lessee without institutional
6 financing.

7 (c) Any extension authorized pursuant to subsection (b)
8 shall be based on the economic life of the improvements as
9 determined by the board or an independent appraiser; provided
10 that the approval of any extension shall be subject to the
11 following:

- 12 (1) The demised premises have been used substantially for
13 the purpose for which they were originally leased;
- 14 (2) The aggregate of the initial term and any extension
15 granted shall not be for more than sixty-five years;
- 16 (3) In the event of a reopening, the rental for any
17 ensuing period shall be the fair market rental at the
18 time of reopening;
- 19 (4) Any federal or private lending institution shall be
20 qualified to do business in the State;



1 (5) Proceeds of any mortgage or loan shall be used solely
2 for the operations or improvements on the demised
3 premises;

4 (6) Where improvements are financed by the lessee, the
5 lessee shall submit receipts of expenditures within a
6 time period specified by the board or else the lease
7 extension shall be canceled; and

8 (7) The rules of the board setting forth any additional
9 terms and conditions, which shall ensure and promote
10 the purposes of the demised lands.

11 (d) The board at any time during the term of any intensive
12 agricultural, aquaculture, or mariculture lease and when
13 justified by sound economic practices or other circumstances,
14 may permit an alternative agricultural, aquaculture, or
15 mariculture use or uses for any portion or portions of the land
16 demised. As a condition to permitting alternative uses, the
17 board may require such other modifications, including rental
18 adjustments or changes in the lease as may be necessary to
19 effect or accommodate the alternative use or uses. An
20 alternative use or uses may be allowed by the board upon:

21 (1) The application of the lessee;



1 (2) Consent of each holder of record having a security
2 interest in the leasehold; and

3 (3) A finding by the board that the alternative use or
4 uses are in the public interest.

5 (e) The board, from time to time, during the term of any
6 agriculture, intensive agriculture, aquaculture, commercial,
7 mariculture, special livestock, pasture, or industrial lease,
8 may modify or eliminate any of the restrictions specified in
9 subsection (a), extend or modify the fixed rental period of the
10 lease, or extend the term of the lease upon a showing of
11 significant economic hardship directly caused by:

12 (1) State disaster, pursuant to chapter 209, including
13 seismic or tidal wave, tsunami, hurricane, volcanic
14 eruption, typhoon, earthquake, flood, or severe
15 drought; or

16 (2) A taking of a portion of the area of the lease by
17 government action by eminent domain, withdrawal, or
18 conservation easement; provided that the portion taken
19 shall not be less than ten per cent of the entire
20 leased area unless otherwise approved by the board;
21 and provided that the board determines that the lessee



1 will not be adequately compensated pursuant to the
2 lease provisions.

3 (f) The approval of any extension granted pursuant to
4 subsection (e) shall be subject to the following:

5 (1) The demised premises has been used substantially for
6 the purposes for which they were originally leased;

7 (2) The aggregate of the initial term and any extension
8 granted shall not be for more than fifty-five years;

9 (3) The rental shall not be less than the rental for the
10 preceding term;

11 (4) The rules of the board, setting forth any additional
12 terms and conditions which shall ensure and promote
13 the purposes of the demised lands; and

14 (5) The length of the extension shall not exceed a
15 reasonable length of time for the purpose of providing
16 relief and shall in no case exceed five years.

17 (g) Any provision of this chapter to the contrary
18 notwithstanding, the board may amend and extend pasture leases
19 in furtherance of public purposes that are the responsibility of
20 the department to promote, including and without limitation
21 preserving existing native forest, reforestation for watershed



1 enhancement and forest carbon sequestration opportunities,
2 facilitating public hunting, establishing and maintaining public
3 access to landlocked reserves, enhancement of public
4 recreational opportunities, and protection and propagation of
5 current biological and other significant resources, subject to
6 the following:

- 7 (1) The demised premises have been used substantially for
8 the purpose for which they were originally leased;
9 (2) The aggregate of the initial term and any extension
10 granted shall be for no more than sixty-five years;
11 and
12 (3) The board may consider key characteristics of public
13 lands most likely to benefit from the amendment and
14 extension of pasture leases, identification of public
15 purposes to be promoted through lease amendment and
16 extension, a description of the types of lessee
17 obligations regarding natural resource conservation
18 and stewardship that will serve to achieve the
19 identified public purposes, a statement of the types
20 of lease amendments that are desirable to promote



1 these public purposes, eligibility requirements for
2 pasture lessees, and applicant qualifications.

3 The chairperson may set the lease rent for the period of
4 the lease term occurring after an amendment under this
5 subsection on such terms and conditions as the chairperson may
6 determine, including but not limited to a value that
7 incentivizes or otherwise promotes ranching operations
8 compatible with the public purposes that are the responsibility
9 of the department to promote, including without limitation those
10 specified above in this subsection.

11 (h) In arriving at a rental value for the lease pursuant
12 to subsection (g), the chairperson may also consider:

- 13 (1) The specified use of the land;
14 (2) Any restriction on grazing or other beneficial uses of
15 the land or portions thereof by lessee;
16 (3) Any conservation or stewardship services required to
17 be performed by the lessee under the amended lease;
18 and
19 (4) Any withdrawal of lands from the lease premises.

20 If an independent appraisal is procured to determine rent
21 for an amended pasture lease, the chairperson may apply a lower



1 rate of return if warranted after consideration of the public
2 purpose served by the lease, use restrictions thereunder, and
3 any obligation of the lessee to provide conservation or
4 stewardship services."

5 SECTION 4. Section 171-59, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§171-59 Disposition by negotiation.** (a) A lease of
8 public land may be disposed of through negotiation upon a
9 finding by the board of land and natural resources that the
10 public interest demands it. Where the public land is being
11 sought under this section by a sugar or pineapple company, and
12 the company is the owner or operator of a mill or cannery, then,
13 for the purposes of this section, the economic unit shall be
14 that acreage of public land which when taken together with the
15 lands already owned or controlled or available to the company,
16 when cultivated is found by the board to be necessary for the
17 company's optimum mill or cannery operation. In all other
18 cases, public land to be sold under this section shall be an
19 economic unit as provided in section 171-33(3).

20 After a determination is made to negotiate the disposition
21 of a lease, the board shall:



- 1 (1) Give public notice as in public auction, in accordance
2 with the procedure set forth in section 171-16(a), of
3 its intention to lease public land through negotiation
4 setting forth the minimum conditions thereunder, the
5 use for which the public land will be leased. Any
6 person interested in securing the lease shall file an
7 application with the board not later than forty-five
8 days after the first publication of the notice;
- 9 (2) Establish reasonable criteria for the selection of the
10 lessee; provided that where the intended use of the
11 land is agriculture, the department of agriculture
12 shall establish the criteria;
- 13 (3) Determine the applicants who meet the criteria for
14 selection set by the board or the department of
15 agriculture, as the case may be, and notify all
16 applicants of its determination. Any applicant may
17 examine the basis of the determination, which shall be
18 in writing, to ascertain whether or not the conditions
19 and criteria established by the board or the
20 department of agriculture were followed; provided that
21 if any applicant does not notify the board of the



1 applicant's objections, and the grounds therefor, in
2 writing, within twenty days of the receipt of the
3 notice, the applicant shall be barred from proceeding
4 to seek legal remedy for any alleged failure of the
5 board to follow the conditions and criteria.

6 If only one applicant meets the criteria for selection of
7 the lessee, the board may, after notice as provided in (3),
8 above, dispose of the lease by negotiation.

9 If two or more applicants meet the criteria for the
10 selection of the lessee, the board shall select the lessee who
11 submits the highest offer contained in a sealed bid deposited
12 with the board.

13 (b) Disposition of public lands for airline, aircraft,
14 airport-related, agricultural processing, cattle feed
15 production, aquaculture, marine, maritime, and maritime-related
16 operations may be negotiated without regard to the limitations
17 set forth in subsection (a) and section 171-16(c); provided
18 that:

19 (1) The disposition encourages competition within the
20 aeronautical, airport-related, agricultural,



1 aquaculture, maritime, and maritime-related
2 operations;

3 (2) The disposition shall not exceed a maximum term of
4 thirty-five years, except in the case of:

5 (A) Maritime and maritime-related operations, which
6 may provide for a maximum term of seventy years;
7 and

8 (B) Aquaculture operations, which may provide for a
9 maximum term of sixty-five years; provided that
10 aquaculture operations in good standing may seek
11 to renew a lease issued under this section and,
12 during the lease term, may engage in supportive
13 activities that are related to or integrated with
14 aquaculture; and

15 (3) The method of disposition of public lands for cattle
16 feed production as set forth in this subsection shall
17 not apply after December 31, 1988.

18 For the purposes of this subsection:

19 "Agricultural processing" means the processing of
20 agricultural products, including dairying, grown, raised, or
21 produced in Hawaii.



1 "Airport-related" means a purpose or activity that requires
2 air transportation to achieve that purpose or activity; or an
3 activity that generates revenue for the airport system as
4 provided in section 261-7.

5 "Aquaculture" means the propagation, cultivation, or
6 farming of aquatic plants and animals in controlled or selected
7 environments for research, commercial, or stocking purposes,
8 including aquaponics or any growing of plants or animals with
9 aquaculture effluents.

10 "Maritime-related" means a purpose or activity that
11 requires and is directly related to the loading, off-loading,
12 storage, or distribution of goods and services of the maritime
13 industry.

14 (c) Any provision of this chapter to the contrary
15 notwithstanding, the board may issue pasture leases by
16 negotiation for lands already under pasture use when doing so
17 will further public purposes that are the responsibility of the
18 department to promote, including, without limitation, preserving
19 existing native forest, reforestation for watershed enhancement
20 and forest carbon sequestration opportunities, facilitating
21 public hunting, establishing and maintaining public access to



1 landlocked reserves, enhancement of public recreational
2 opportunities, and protection and propagation of current
3 biological and other significant resources, subject to the
4 following:

- 5 (1) The term of any pasture lease issued under this
6 subsection shall be for no more than sixty-five years;
7 and
8 (2) The board may consider key characteristics of public
9 lands most likely to benefit from the negotiation of
10 pasture leases, identification of public purposes to
11 be promoted through negotiation of pasture leases, a
12 description of the types of lessee obligations
13 regarding natural resource conservation, and
14 stewardship that will serve to achieve the identified
15 public purposes, eligibility requirements for pasture
16 lessees, and applicant qualifications.

17 The chairperson may set the rent for pasture leases issued
18 under this subsection on such terms and conditions as the
19 chairperson may determine, including but not limited to a value
20 that incentivizes or otherwise promotes ranching operations
21 compatible with the public purposes that are the responsibility



1 of the department to promote, including without limitation those
2 specified above in this subsection.

3 (d) In arriving at a rental value for the lease pursuant
4 to subsection (c), the chairperson may also consider:

5 (1) The specified use of the land;

6 (2) Any restriction on grazing or other beneficial uses of
7 the land or portions thereof by lessee; and

8 (3) Any conservation or stewardship services required to
9 be performed by the lessee under the lease.

10 If an independent appraisal is procured to determine rent
11 for a pasture lease, the chairperson may apply a lower rate of
12 return if warranted after consideration of the public purpose
13 served by the lease, use restrictions thereunder, and any
14 obligation of the lessee to provide conservation or stewardship
15 services."

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

19 SECTION 6. New statutory material is underscored.

20 SECTION 7. This Act shall take effect on January 1, 2050.



Report Title:

Public Lands; Leasing for Pasture Use; Transfer of Lands;
Priority Use

Description:

Authorizes the board of land and natural resources to amend and extend existing pasture leases and to issue new pasture leases by negotiation in furtherance of public purposes the department of land and natural resources is responsible for promoting. Gives priority to the department of land and natural resources to use land that was transferred for productive agricultural uses, subject to certain conditions. Requires a third-party advisory committee to be established before the disposition or transfer of any disputed lands. Effective 1/1/2050. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

