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

9 (1) Authorize the board of land and natural resources to  
10 amend and extend existing pasture leases and to issue  
11 new pasture leases by negotiation in furtherance of  
12 public purposes the department of land and natural  
13 resources is responsible for promoting; and

14 (2) Specify that persons with leases be compensated for  
15 capital assets when leases are withdrawn.

16 SECTION 2. 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, food production, and protection and  
5 propagation of current biological and other significant  
6 resources, subject to 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 board may set the lease rent for the period of the  
4           lease term occurring after an amendment under this subsection on  
5           such terms and conditions as the board may determine, including  
6           but not limited to a value that incentivizes or otherwise  
7           promotes ranching operations compatible with the public purposes  
8           that are the responsibility of the department to promote,  
9           including without limitation those specified above in this  
10          subsection.

11          (h) In arriving at a rental value for the lease pursuant  
12          to subsection (g), an agricultural appraiser shall be procured  
13          to determine rent for an amended lease and the board may also  
14          consider:

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



1       The board may apply a lower rate of return than the rent  
2 amount determined by the agricultural appraiser if warranted  
3 after consideration of the public purpose served by the lease,  
4 use restrictions thereunder, and any obligation of the lessee to  
5 provide conservation or stewardship services."

6       SECTION 3. Section 171-37.5, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

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

20       Upon a withdrawal, any person with a long-term lease shall  
21 be compensated for the present value of all [~~permanent~~]:





1 time the board approves the withdrawal or taking of a portion or  
2 all of the leased land. The fair market value shall be  
3 determined by:

4 (1) An employee of the department of agriculture qualified  
5 to appraise livestock; or

6 (2) A disinterested livestock appraiser whose services  
7 shall be contracted for by the board,

8 and the lessee shall be promptly notified of the determination;  
9 provided that should the lessee fail to agree upon the fair  
10 market value, the lessee may appoint the lessee's own livestock  
11 appraiser who together with the board's appraiser shall appoint  
12 a third appraiser and the fair market value shall be determined  
13 by arbitration as provided in chapter 658A. The lessee shall  
14 pay for the lessee's own livestock appraiser, the board shall  
15 pay for the board's livestock appraiser, and the cost of the  
16 third livestock appraiser shall be borne equally by the lessee  
17 and the board. Whenever more than one livestock appraiser is  
18 appointed, each shall prepare and submit an independent  
19 appraisal report."

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



1           "**§171-59 Disposition by negotiation.** (a) A lease of  
2 public land may be disposed of through negotiation upon a  
3 finding by the board of land and natural resources that the  
4 public interest demands it. Where the public land is being  
5 sought under this section by a sugar or pineapple company, and  
6 the company is the owner or operator of a mill or cannery, then,  
7 for the purposes of this section, the economic unit shall be  
8 that acreage of public land which when taken together with the  
9 lands already owned or controlled or available to the company,  
10 when cultivated is found by the board to be necessary for the  
11 company's optimum mill or cannery operation. In all other  
12 cases, public land to be sold under this section shall be an  
13 economic unit as provided in section 171-33(3).

14           After a determination is made to negotiate the disposition  
15 of a lease, the board shall:

16           (1) Give public notice as in public auction, in accordance  
17 with the procedure set forth in section 171-16(a), of  
18 its intention to lease public land through negotiation  
19 setting forth the minimum conditions thereunder, the  
20 use for which the public land will be leased. Any  
21 person interested in securing the lease shall file an



1 application with the board not later than forty-five  
2 days after the first publication of the notice;

3 (2) Establish reasonable criteria for the selection of the  
4 lessee; provided that where the intended use of the  
5 land is agriculture, the department of agriculture  
6 shall establish the criteria; and

7 (3) Determine the applicants who meet the criteria for  
8 selection set by the board or the department of  
9 agriculture, as the case may be, and notify all  
10 applicants of its determination. Any applicant may  
11 examine the basis of the determination, which shall be  
12 in writing, to ascertain whether or not the conditions  
13 and criteria established by the board or the  
14 department of agriculture were followed; provided that  
15 if any applicant does not notify the board of the  
16 applicant's objections, and the grounds therefor, in  
17 writing, within twenty days of the receipt of the  
18 notice, the applicant shall be barred from proceeding  
19 to seek legal remedy for any alleged failure of the  
20 board to follow the conditions and criteria.



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

4           If two or more applicants meet the criteria for the  
5 selection of the lessee, the board shall select the lessee who  
6 submits the highest offer contained in a sealed bid deposited  
7 with the board.

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

14           (1) The disposition encourages competition within the  
15 aeronautical, airport-related, agricultural,  
16 aquaculture, maritime, and maritime-related  
17 operations;

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



1 (A) Maritime and maritime-related operations, which  
2 may provide for a maximum term of seventy years;  
3 and

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

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

14 For the purposes of this subsection:

15 "Agricultural processing" means the processing of  
16 agricultural products, including dairying, grown, raised, or  
17 produced in Hawaii.

18 "Airport-related" means a purpose or activity that requires  
19 air transportation to achieve that purpose or activity; or an  
20 activity that generates revenue for the airport system as  
21 provided in section 261-7.



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

6 "Maritime-related" means a purpose or activity that  
7 requires and is directly related to the loading, off-loading,  
8 storage, or distribution of goods and services of the maritime  
9 industry.

10 (c) Any provision of this chapter to the contrary  
11 notwithstanding, the board may issue pasture leases by  
12 negotiation for lands already under pasture use when doing so  
13 will further public purposes that are the responsibility of the  
14 department to promote, including, without limitation, preserving  
15 existing native forest, reforestation for watershed enhancement  
16 and forest carbon sequestration opportunities, facilitating  
17 public hunting, establishing and maintaining public access to  
18 landlocked reserves, enhancement of public recreational  
19 opportunities, food production, and protection and propagation  
20 of current biological and other significant resources, subject  
21 to the following:



1       (1) The term of any pasture lease issued under this  
2       subsection shall be for no more than sixty-five years;

3       and

4       (2) The board may consider key characteristics of public  
5       lands most likely to benefit from the negotiation of  
6       pasture leases, identification of public purposes to  
7       be promoted through negotiation of pasture leases, a  
8       description of the types of lessee obligations  
9       regarding natural resource conservation, and  
10       stewardship that will serve to achieve the identified  
11       public purposes, eligibility requirements for pasture  
12       lessees, and applicant qualifications.

13       The board may set the rent for pasture leases issued under  
14       this subsection on such terms and conditions as the board may  
15       determine, including but not limited to a value that  
16       incentivizes or otherwise promotes ranching operations  
17       compatible with the public purposes that are the responsibility  
18       of the department to promote, including without limitation those  
19       specified above in this subsection.

20       (d) In arriving at a rental value for the lease pursuant  
21       to subsection (c), an agricultural appraiser shall be procured



1 to determine rent for an amended lease and the board may also  
2 consider:

- 3       (1) The specified use of the land;
- 4       (2) Any restriction on grazing or other beneficial uses of  
5       the land or portions thereof by lessee; and
- 6       (3) Any conservation or stewardship services required to  
7       be performed by the lessee under the lease.

8       The board may apply a lower rate of return than the rent  
9       amount determined by the agricultural appraiser if warranted  
10      after consideration of the public purpose served by the lease,  
11      use restrictions thereunder, and any obligation of the lessee to  
12      provide conservation or stewardship services."

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

16       SECTION 6. New statutory material is underscored.

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



**Report Title:**

Public Lands; Leasing for Pasture Use; Board of Land and Natural Resources; Lease Withdrawal; Compensation

**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. Specifies that persons with leases be compensated for the present value of all capital assets located on the land at the time of a lease withdrawal. Effective 1/1/2050. (HD2)

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