
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 lessees of
2 state pasture lands have requested the department of land and
3 natural 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 value of
9 certain natural resources in 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 to
13 the department of agriculture can be relieved by providing the
14 department of land and natural resources with statutory powers



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

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

8 The purpose of this Act is to authorize the board of land
9 and natural resources to amend and extend existing pasture
10 leases and issue new pasture leases by negotiation, to further
11 protect and enhance the State's pasture lands.

12 SECTION 2. Section 171-36, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§171-36 Lease restrictions; generally.** (a) Except as
15 otherwise provided, the following restrictions shall apply to
16 all leases:

- 17 (1) Options for renewal of terms are prohibited;
- 18 (2) No lease shall be for a longer term than sixty-five
19 years, except in the case of a residential leasehold,
20 which may provide for an initial term of fifty-five
21 years with the privilege of extension to meet the



1 requirements of the Federal Housing Administration,
2 Federal National Mortgage Association, Federal Land
3 Bank of Berkeley, Federal Intermediate Credit Bank of
4 Berkeley, Berkeley Bank for Cooperatives, or
5 Department of Veterans Affairs requirements; provided
6 that the aggregate of the initial term and extension
7 shall in no event exceed seventy-five years;

8 (3) No lease shall be made for any land under a lease
9 which has more than two years to run;

10 (4) No lease shall be made to any person who is in arrears
11 in the payment of taxes, rents, or other obligations
12 owed to the State or any county;

13 (5) No lease shall be transferable or assignable, except
14 by devise, bequest, or intestate succession; provided
15 that with the approval of the board, the assignment
16 and transfer of a lease or unit thereof may be made in
17 accordance with current industry standards, as
18 determined by the board; provided further that prior
19 to the approval of any assignment of lease, the board
20 shall have the right to review and approve the
21 consideration to be paid by the assignee and may



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

- 12 (6) The lessee shall not sublet the whole or any part of
13 the demised premises, except with the approval of the
14 board; provided that prior to the approval, the board
15 shall have the right to review and approve the rent to
16 be charged to the sublessee; provided further that in
17 the case where the lessee is required to pay rent
18 based on a percentage of its gross receipts, the
19 receipts of the sublessee shall be included as part of
20 the lessee's gross receipts; provided further that the
21 board shall have the right to review and, if



1 necessary, revise the rent of the demised premises
2 based upon the rental rate charged to the sublessee
3 including the percentage rent, if applicable, and
4 provided that the rent may not be revised downward;

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

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

10 (9) No lease of public lands, including submerged lands,
11 or any extension of any lease of public lands shall be
12 issued by the State to any person to construct, use,
13 or maintain a sunbathing or swimming pier or to use
14 the lands for those purposes, unless the lease, or any
15 extension thereof, contains provisions permitting the
16 general public to use the pier facilities on the
17 public lands and requiring that a sign or signs be
18 placed on the pier, clearly visible to the public,
19 that indicates the public's right to the use of the
20 pier. The board, at the earliest practicable date,
21 and where legally possible, shall cause all existing



1 leases to be amended to conform to this paragraph.

2 The term "lease", for the purposes of this paragraph,
3 includes month-to-month rental agreements and similar
4 tenancies.

5 (b) The board, from time to time, upon the issuance or
6 during the term of any intensive agricultural, aquaculture,
7 commercial, mariculture, special livestock, pasture, or
8 industrial lease, may:

9 (1) Modify or eliminate any of the restrictions specified
10 in subsection (a);

11 (2) Extend or modify the fixed rental period of the lease;
12 provided that the aggregate of the initial term and
13 any extension granted shall not exceed sixty-five
14 years; or

15 (3) Extend the term of the lease,
16 to the extent necessary to qualify the lease for mortgage
17 lending or guaranty purposes with any federal mortgage lending
18 agency, to qualify the lessee for any state or private lending
19 institution loan, private loan guaranteed by the State, or any
20 loan in which the State and any private lender participates, or
21 to amortize the cost of substantial improvements to the demised



1 premises that are paid for by the lessee without institutional
2 financing.

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

- 8 (1) The demised premises have been used substantially for
9 the purpose for which they were originally leased;
- 10 (2) The aggregate of the initial term and any extension
11 granted shall not be for more than sixty-five years;
- 12 (3) In the event of a reopening, the rental for any
13 ensuing period shall be the fair market rental at the
14 time of reopening;
- 15 (4) Any federal or private lending institution shall be
16 qualified to do business in the State;
- 17 (5) Proceeds of any mortgage or loan shall be used solely
18 for the operations or improvements on the demised
19 premises;
- 20 (6) Where improvements are financed by the lessee, the
21 lessee shall submit receipts of expenditures within a



1 time period specified by the board or else the lease
2 extension shall be canceled; and

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

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

- 16 (1) The application of the lessee;
17 (2) Consent of each holder of record having a security
18 interest in the leasehold; and
19 (3) A finding by the board that the alternative use or
20 uses are in the public interest.



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

- 8 (1) State disaster, pursuant to chapter 209, including
9 seismic or tidal wave, tsunami, hurricane, volcanic
10 eruption, typhoon, earthquake, flood, or severe
11 drought; or
- 12 (2) A taking of a portion of the area of the lease by
13 government action by eminent domain, withdrawal, or
14 conservation easement; provided that the portion taken
15 shall not be less than ten per cent of the entire
16 leased area unless otherwise approved by the board;
17 and provided that the board determines that the lessee
18 will not be adequately compensated pursuant to the
19 lease provisions.

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



- 1 (1) The demised premises has been used substantially for
2 the purposes for which they were originally leased;
- 3 (2) The aggregate of the initial term and any extension
4 granted shall not be for more than fifty-five years;
- 5 (3) The rental shall not be less than the rental for the
6 preceding term;
- 7 (4) The rules of the board, setting forth any additional
8 terms and conditions, which shall ensure and promote
9 the purposes of the demised lands; and
- 10 (5) The length of the extension shall not exceed a
11 reasonable length of time for the purpose of providing
12 relief and shall in no case exceed five years.
- 13 (g) Any provision of this chapter to the contrary
14 notwithstanding, the board may amend and extend pasture leases
15 in furtherance of public purposes that are the responsibility of
16 the department to promote, including, without limitation, the
17 preservation of existing native forest, reforestation for
18 watershed enhancement and forest carbon sequestration
19 opportunities, facilitation of public hunting, establishment and
20 maintenance of public access to landlocked reserves, enhancement
21 of public recreational opportunities, and protection and



1 propagation of current biological and other significant
2 resources, subject to the following:

3 (1) The demised premises have been used substantially for
4 the purpose for which they were originally leased;

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

8 (3) The board may consider key characteristics of public
9 lands most likely to benefit from the amendment and
10 extension of pasture leases, public purposes to be
11 promoted through lease amendment and extension, the
12 types of lessee obligations regarding natural resource
13 conservation and stewardship that will serve to
14 achieve the identified public purposes, the types of
15 lease amendments that are desirable to promote these
16 public purposes, eligibility requirements for pasture
17 lessees, and applicant qualifications.

18 Lease rents for pastoral and agricultural leases shall be
19 determined based on agricultural use value. The chairperson may
20 set the lease rent for the period of the lease term occurring
21 after an amendment under this subsection, including but not



1 limited to a value that incentivizes or otherwise promotes
2 ranching operations compatible with the public purposes that are
3 the responsibility of the department to promote. In arriving at
4 a rental value, the chairperson may also consider the specified
5 use of the land, any restriction on grazing or other beneficial
6 uses of the land or portions thereof by the lessee, any
7 conservation or stewardship services required to be performed by
8 the lessee under the amended lease, and any withdrawal of lands
9 from the lease premises. If an independent appraisal is
10 procured to determine rent for an amended pasture lease, the
11 chairperson may apply a lower rate of return if warranted after
12 consideration of the public purpose served by the lease, use
13 restrictions thereunder, and any obligation of the lessee to
14 provide conservation or stewardship services."

15 SECTION 3. Section 171-59, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§171-59 **Disposition by negotiation.** (a) A lease of
18 public land may be disposed of through negotiation upon a
19 finding by the board of land and natural resources that the
20 public interest demands it. Where the public land is being
21 sought under this section by a sugar or pineapple company[-] and



1 the company is the owner or operator of a mill or cannery, then,
2 for the purposes of this section, the economic unit shall be
3 that acreage of public land which when taken together with the
4 lands already owned or controlled or available to the company,
5 when cultivated is found by the board to be necessary for the
6 company's optimum mill or cannery operation. In all other
7 cases, public land to be sold under this section shall be an
8 economic unit as provided in section 171-33(3).

9 After a determination is made to negotiate the disposition
10 of a lease, the board shall:

11 (1) Give public notice as in public auction, in accordance
12 with the procedure set forth in section 171-16(a), of
13 its intention to lease public land through negotiation
14 setting forth the minimum conditions thereunder, the
15 use for which the public land will be leased. Any
16 person interested in securing the lease shall file an
17 application with the board not later than forty-five
18 days after the first publication of the notice;

19 (2) Establish reasonable criteria for the selection of the
20 lessee; provided that where the intended use of the



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

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

20 If two or more applicants meet the criteria for the
21 selection of the lessee, the board shall select the lessee who



1 submits the highest offer contained in a sealed bid deposited
2 with the board.

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

9 (1) The disposition encourages competition within the
10 aeronautical, airport-related, agricultural,
11 aquaculture, maritime, and maritime-related
12 operations;

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

15 (A) Maritime and maritime-related operations, which
16 may provide for a maximum term of seventy years;
17 and

18 (B) Aquaculture operations, which may provide for a
19 maximum term of sixty-five years; provided that
20 aquaculture operations in good standing may seek
21 to renew a lease issued under this section and,



1 during the lease term, may engage in supportive
2 activities that are related to or integrated with
3 aquaculture; and

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

7 For the purposes of this subsection:

8 "Agricultural processing" means the processing of
9 agricultural products, including dairying, grown, raised, or
10 produced in Hawaii.

11 "Airport-related" means a purpose or activity that requires
12 air transportation to achieve that purpose or activity; or an
13 activity that generates revenue for the airport system as
14 provided in section 261-7.

15 "Aquaculture" means the propagation, cultivation, or
16 farming of aquatic plants and animals in controlled or selected
17 environments for research, commercial, or stocking purposes,
18 including aquaponics or any growing of plants or animals with
19 aquaculture effluents.

20 "Maritime-related" means a purpose or activity that
21 requires and is directly related to the loading, off-loading,



1 storage, or distribution of goods and services of the maritime
2 industry.

3 (c) Any provision of this chapter to the contrary
4 notwithstanding, the board may issue pasture leases by
5 negotiation for lands already under pasture use when doing so
6 will further public purposes that are the responsibility of the
7 department to promote, including, without limitation, the
8 preservation of existing native forest, reforestation for
9 watershed enhancement and forest carbon sequestration
10 opportunities, facilitation of public hunting, establishment and
11 maintenance of public access to landlocked reserves, enhancement
12 of public recreational opportunities, and protection and
13 propagation of current biological and other significant
14 resources, subject to the following:

15 (1) The term of any pasture lease issued under this
16 subsection shall not be for more than sixty-five
17 years; and

18 (2) The board may consider key characteristics of public
19 lands most likely to benefit from the negotiation of
20 pasture leases, public purposes to be promoted through
21 negotiation of pasture leases, the types of lessee



1 obligations regarding natural resource conservation
2 and stewardship that will serve to achieve the
3 identified public purposes, eligibility requirements
4 for pasture lessees, and applicant qualifications.

5 Lease rents for pastoral and agricultural leases shall be
6 determined based on agricultural use value. The chairperson may
7 set the rent for pasture leases issued under this subsection,
8 including but not limited to a value that incentivizes or
9 otherwise promotes ranching operations compatible with the
10 public purposes that are the responsibility of the department to
11 promote. In arriving at a rental value, the chairperson may
12 also consider the specified use of the land, any restriction on
13 grazing or other beneficial uses of the land or portions thereof
14 by lessee, and any conservation or stewardship services required
15 to be performed by the lessee under the lease. If an
16 independent appraisal is procured to determine rent for a
17 pasture lease, the chairperson may apply a lower rate of return
18 if warranted after consideration of the public purpose served by
19 the lease, use restrictions thereunder, and any obligation of
20 the lessee to provide conservation or stewardship services.



1 (d) If at any time the land transferred pursuant to this
2 section is in productive agricultural use under the department
3 of agriculture's authority and the department seeks to alter or
4 convert the existing use to its reserved uses or priorities,
5 then preference shall be given to the department's alternative
6 use; provided that as of the anticipated commencement of the
7 alternative use:

8 (1) The department has:

- 9 (A) Completed a plan of utilization or project plan
10 for the alternative use;
11 (B) Secured funding to commence the plan; and
12 (C) Given prior written notice to the department of
13 agriculture and the occupant of the transferred
14 land no later than one year prior to the
15 alteration or conversion.

16 The occupant shall be responsible for any costs to
17 relocate its operations that are ordinarily associated
18 with reconfiguring existing operations to accommodate
19 the loss of areas removed for the department's
20 alternative use;

21 (2) The board has:



- 1 (A) Analyzed the likelihood and capacity for the
- 2 department to implement the alternative use; and
- 3 (B) Approved the department's completed plan of
- 4 utilization or project plan for the alternative
- 5 use;
- 6 (3) The department shall:
- 7 (A) Be solely responsible for all costs of
- 8 identification, designation, and subdivision of
- 9 the land transferred, or any portions thereof,
- 10 that are required for the implementation of its
- 11 plan; and
- 12 (B) Return the land transferred to agricultural,
- 13 watershed, or forestry use if the project plan is
- 14 not completed within the timeframe specified in
- 15 the approved plan;
- 16 (4) The State shall:
- 17 (A) Indemnify any lessee required by the department
- 18 of agriculture to provide certain other
- 19 activities; and
- 20 (B) Provide the lessee with proof of indemnity to the
- 21 degree acceptable with the level of exposure; and



- 1 (5) The lessor shall:
- 2 (A) Be responsible for damage or injury caused by the
- 3 lessor's officers and employees in the course of
- 4 their employment to the extent that the lessor's
- 5 liability for such damage or injury has been
- 6 determined by a court or otherwise agreed to by
- 7 the lessor; and
- 8 (B) Pay for such damage or injury to the extent
- 9 permitted by law; provided that funds are
- 10 appropriated, allotted or otherwise properly made
- 11 available for that purpose.

12 The lessee acknowledges that this provision, in
13 itself, shall not constitute or be interpreted to be
14 any type of indemnification, defense, or hold harmless
15 obligation of the lessor. The lessor's obligations
16 under this section shall survive the expiration or
17 earlier termination of the lease."

18 SECTION 4. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.
3 SECTION 6. This Act shall take effect upon its approval.



Report Title:

Public Lands; Leases; Pasture 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 to further the public purposes that the Department of Land and Natural Resources (Department) is responsible for promoting. Requires lease rents for pastoral and agricultural leases to be determined based on agricultural use value. Allows the Department to alter or convert the use of the productive agricultural land transferred under certain circumstances. (SD1)

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