

**ACT 234**

S.B. NO. 5

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that the department of land and natural resources established conservation easements on public land originally leased for pasture or special livestock use in order to widen Saddle road in the county of Hawaii. As a result, the lessee ranchers suffered serious financial losses.

The department of land and natural resources established conservation easements on approximately six thousand acres of leased lands, thereby preventing the lessees from grazing cattle and effectively depriving the lessees of their use of the land. Although the department of land and natural resources reduced the lease rent in proportion to the taking of the land, the lessees received no other compensation. The final report on discussions with affected ranchers in connection with the Saddle road realignment project prepared in response to Act 236, Session Laws of Hawaii 2001, states that the United States Department

of Transportation Federal Highways Administration will provide compensation to the existing lessees. However, according to the lessees, the department of land and natural resources has taken the position that because Hawaii law did not provide for any compensation, none was required.

Chapter 171, Hawaii Revised Statutes, provides for rent reductions if the land withdrawn causes the land to become unusable for the specific use or uses for which it was originally leased. The law provides no other method of compensation. However, the lessees are still required by their leases to maintain insurance on the land and pay taxes for the land they cannot use for the specific purpose for which it was originally leased.

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

S.B. No. 2951, S.D. 2, H.D. 2, C.D. 1, regular session of 2010, attempted to address this issue by providing fair compensation when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes. This measure passed the legislature, but was vetoed by the governor on the grounds that the bill "disproportionately and inappropriately compensates these lessees of public lands above other lessees of State lands." In testimony opposing the measure, the department of land and natural resources posited that rent reduction under existing law is sufficiently fair, and that easements do not prevent the lessee from making any beneficial use of the land even when it prevents them from using the land for its original intended purpose. However, the legislature believes that rent reduction is insufficient, especially if the lessor fails to recognize that the law is designed to take into account the lessee's original intended purpose for leasing the land, and finds that this Act is necessary to provide more equitable relief to lessees of public lands in partial takings or condemnations where the lessee is prevented from using the lands as originally intended.

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

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

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

Upon a withdrawal, any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of the withdrawal that were legally made to or constructed upon the land by the lessee of the leased land being withdrawn.

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

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

- (1) An employee of the department of agriculture qualified to appraise livestock; or
- (2) A disinterested livestock appraiser whose services shall be contracted for by the board,

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

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

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

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

- (1) The lease term shall ~~be~~ not be less than fifteen years nor more than thirty-five years, except that if the type of disposition requires the lessee to occupy the premises as the lessee's own personal residence, ~~it~~ the lease term may be longer than thirty-five years~~, but~~; provided that the lease term shall not be in excess of seventy-five years, ~~and~~ except that in the case of a tree-crop orchard lease, the term ~~of which~~ shall not be in excess of forty-five years~~[-]~~;
- (2) If the land being leased is not immediately productive and requires extensive expenditures for clearing, conditioning of the soil, the securing of water, the planting of grasses, or the construction of improvements, as the result of which a longer term is necessary to

amortize the lessee's investment, then the lease term may be longer than thirty-five years, 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 value thereof shall be paid based upon the unexpired term of the lease; provided further that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of the crops; and provided further that upon withdrawal any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee to the leased land being withdrawn. In the case of tree crops, the board shall pay to the lessee the residual value of the trees taken and, if there are unharvested crops, the value of the crops also].~~

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

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

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

- (1) [~~the value~~] Value of growing crops, if any, [~~which~~] that the lessee is not permitted to harvest; and
- (2) [~~the proportionate~~] Proportionate value of the lessee's permanent improvements [~~so~~] taken in the proportion that it bears to the unexpired term of the lease[; ~~provided that the~~].

The lessee [may], in the alternative, may remove and relocate the lessee's improvements to the remainder of the lands occupied by the lessee. The foregoing rights of the lessee shall not be exclusive of any other to which the lessee may be entitled by law[-], including those rights established in section 171-\_\_\_. Where the portion [~~so~~] taken renders the remainder unsuitable for the uses for which the land was leased, the lessee shall have the option to surrender the lessee's lease

and be discharged for any further liability therefor; provided that the lessee may remove the lessee's permanent improvements within ~~[such]~~ a reasonable period allowed by the board ~~[of land and natural resources].~~"

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

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved June 27, 2013.)

**Note**

1. Edited pursuant to HRS §23G-16.5.