

JAN 28 2009

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. The legislature finds that in order to
2 effectuate the widening of Saddle Road, in the County of Hawaii,
3 the department of land and natural resources established
4 conservation easements on all or a portion of the lands of
5 ranchers holding public land leases for pasture or special
6 livestock use. Consequently, the lessee ranchers suffered
7 serious financial losses.

8 The department of land and natural resources determined
9 that a conservation easement be established on approximately six
10 thousand acres of leased lands, preventing the lessees from
11 grazing cattle on the land and effectively depriving the lessees
12 of their use of the land. The department of land and natural
13 resources reduced the lease rent in proportion to the taking of
14 the land; however, according to information received by the
15 legislature, the lessees who lost use of the land received no
16 other compensation. The final report on discussions with
17 affected ranchers in connection with the saddle road realignment



1 project prepared in response to Act 236, Session Laws of Hawaii
2 2001, states that the United States Department of Transportation
3 Highways Division will provide compensation to the existing
4 lessees, however, according to the lessees, the department of
5 land and natural resources took the position that because Hawaii
6 law did not provide for any compensation, none was required.
7 Despite the lack of compensation, the lessees are required by
8 their leases to maintain insurance on the land and pay taxes for
9 the land. In addition, several lessees had to reduce their herd
10 and suffered a financial loss as a result of the sale of the
11 cattle. One of the long-term effects of a reduced herd is that
12 lessees cannot mitigate the long-term, fixed costs associated
13 with operating a ranch in the way they anticipated when the
14 lease was negotiated. Thus, the lessees experience financial
15 hardship for an extended period of time that is not sufficiently
16 mitigated by a reduction in lease rent.

17 According to some lessees, the banking industry took notice
18 of the conservation easements and reduced their valuation of the
19 lease interest. As a result, when lessees approach lenders for
20 much needed capital, the banks do not recognize the leasehold as
21 an asset.



1 The legislature believes that by providing an automatic
2 lease extension when a withdrawal, taking, or condemnation
3 occurs, the lessees will be provided with a greater likelihood
4 of having their leases considered as assets by lenders. This
5 will in turn assist the lessees with attaining much needed
6 capital.

7 The purpose of this Act is to prevent similar situations as
8 the Saddle Road withdrawal in the future. This Act is also
9 intended to better provide for the viability and survival of
10 Hawaii's agricultural producers. This Act provides:

- 11 (1) Fair compensation for lessees; and
12 (2) An automatic lease extension to protect the lessees'
13 interest in the land;
14 when the department of land and natural resources withdraws,
15 takes, or condemns any portion of the land preventing the lessee
16 from using the land as originally leased for.

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

20 "§171- Withdrawal of leased land; fair compensation;
21 lease extension. (a) Upon the withdrawal, or upon the taking
22 which causes any portion of the land originally demised to



1 become unusable for the specific use or uses for which it was
2 demised, pursuant to section 171-37(3), the rent shall be
3 reduced in proportion to the value of the land withdrawn or made
4 unusable, and if any permanent improvement constructed upon the
5 land by the lessee is destroyed or made unusable in the process
6 of the withdrawal or taking, the proportionate value thereof
7 shall be paid to the lessee based upon the unexpired term of the
8 lease; provided that no withdrawal or taking shall be had as to
9 those portions of the land which are then under cultivation with
10 crops until the crops are harvested, unless the board pays to
11 the lessee the value of the crops; and provided further that
12 upon withdrawal, any person with a long-term lease shall be
13 compensated for the present value of all permanent improvements
14 in place at the time of withdrawal that were legally constructed
15 upon the land by the lessee of the leased land being withdrawn.
16 In the case of tree crops, as defined in section 171-37, the
17 board shall pay to the lessee the residual value of the trees
18 taken and, if there are unharvested crops, the value of the
19 crops.

20 (b) In addition to compensation received pursuant to
21 subsection (a) or section 171-38, a lessee shall be entitled to



1 compensation for costs attributable to the diminished use of the
2 leased land, including but not limited to:

3 (1) Reimbursement for any insurance costs associated with
4 the withdrawn leased land; and

5 (2) Loss of reasonably anticipated income associated with
6 the withdrawn leased land.

7 (c) In addition to any compensation received pursuant to
8 subsections (a) and (b), the lessee may exercise a right to an
9 automatic lease extension. Upon request of the lessee, the
10 board shall extend a lease upon a withdrawal or taking, pursuant
11 to section 171-37, or a condemnation, pursuant to section
12 171-38, for not more than the number of years remaining in the
13 original lease. The extended lease shall consist of terms and
14 conditions consistent with subsection (a) and section 171-38."

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

17 "§171-37 Lease restrictions; intensive agricultural and
18 pasture uses. In addition to the restrictions provided in
19 section 171-36, the following restrictions shall apply to all
20 leases for intensive agricultural and pasture uses:

21 (1) The lease term shall be not less than fifteen years
22 nor more than thirty-five years, except that if the



1 type of disposition requires the lessee to occupy the
2 premises as the lessee's own personal residence, it
3 may be longer than thirty-five years, or except as
4 made longer as provided in subsection 171- (c), but
5 not in excess of seventy-five years, and except in the
6 case of a tree-crop orchard lease the term of which
7 shall not be in excess of forty-five years.

8 (2) If the land being leased is not immediately productive
9 and requires extensive expenditures for clearing,
10 conditioning of the soil, the securing of water, the
11 planting of grasses, or the construction of
12 improvements, as the result of which a longer term is
13 necessary to amortize the lessee's investment, then
14 the lease term may be longer than thirty-five years,
15 but not in excess of fifty-five years.

16 (3) The land leased hereunder, or any portion thereof,
17 shall be subject to withdrawal by the board [~~of land~~
18 ~~and natural resources~~] at any time during the term of
19 the lease with reasonable notice and [~~without~~]
20 compensation, [~~except as provided herein,~~] as provided
21 in section 171- , for public uses or purposes,
22 including residential, commercial, industrial, or



1 resort developments, for constructing new roads or
2 extensions, or changes in line or grade of existing
3 roads, for rights-of-way and easements of all kinds,
4 and shall be subject to the right of the board to
5 remove soil, rock, or gravel as may be necessary for
6 the construction of roads and rights-of-way within or
7 without the demised premises [~~;~~ ~~provided that upon the~~
8 ~~withdrawal, or upon the taking which causes any~~
9 ~~portion of the land originally demised to become~~
10 ~~unusable for the specific use or uses for which it was~~
11 ~~demised, the rent shall be reduced in proportion to~~
12 ~~the value of the land withdrawn or made unusable, and~~
13 ~~if any permanent improvement constructed upon the land~~
14 ~~by the lessee is destroyed or made unusable in the~~
15 ~~process of the withdrawal or taking, the proportionate~~
16 ~~value thereof shall be paid based upon the unexpired~~
17 ~~term of the lease; provided further that no withdrawal~~
18 ~~or taking shall be had as to those portions of the~~
19 ~~land which are then under cultivation with crops until~~
20 ~~the crops are harvested, unless the board pays to the~~
21 ~~lessee the value of the crops; and provided further~~
22 ~~that upon withdrawal any person with a long term lease~~



1 ~~shall be compensated for the present value of all~~
2 ~~permanent improvements in place at the time of~~
3 ~~withdrawal that were legally constructed upon the land~~
4 ~~by the lessee to the leased land being withdrawn. In~~
5 ~~the case of tree crops, the board shall pay to the~~
6 ~~lessee the residual value of the trees taken and, if~~
7 ~~there are unharvested crops, the value of the crops~~
8 ~~also.]~~

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

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

13 "**§171-38 Condemnation of leases.** The lease shall provide
14 that whenever a portion of the public land under lease is
15 condemned for public purposes by the State, or any county or
16 city and county, or any other governmental agency or
17 subdivision, the rental shall be reduced in proportion to the
18 value of the portion of the premises condemned, and the lessee
19 shall be entitled to receive from the condemning authority (1)
20 the value of growing crops, if any, which the lessee is not
21 permitted to harvest and (2) the proportionate value of the
22 lessee's permanent improvements so taken in the proportion that



1 it bears to the unexpired term of the lease; provided that the
 2 lessee may, in the alternative, remove and relocate the lessee's
 3 improvements to the remainder of the lands occupied by the
 4 lessee. The foregoing rights of the lessee shall not be
 5 exclusive of any other to which the lessee may be entitled by
 6 law[-], including those rights established by section 171- .


7 Where the portion so taken renders the remainder unsuitable for
 8 the uses for which the land was leased, the lessee shall have
 9 the option to surrender the lessee's lease and be discharged for
 10 any further liability therefor; provided that the lessee may
 11 remove the lessee's permanent improvements within such
 12 reasonable period allowed by the board [~~of land and natural~~
 13 ~~resources~~]."

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

17 SECTION 6. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect on July 1, 2009.

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 INTRODUCED BY: *[Handwritten signature]*

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Report Title:

Public Lands; Leasehold; Agricultural Uses; Condemnation;
Withdrawal; Compensation; Lease Extension

Description:

Provides for fair compensation, including an automatic lease extension, when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.

