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## A BILL FOR AN ACT

RELATING TO STATE LEASES.

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

1           SECTION 1. The legislature finds that Act 31, Session Laws  
2 of Hawaii 2008, allowed solar energy facility activities on  
3 agricultural districts; provided that the soil on the  
4 agricultural district was classified by the land study bureau as  
5 overall (master) productivity rating class D or E. These  
6 activities, however, have the potential of impinging or  
7 disrupting other on-going agricultural operations, including  
8 ranching concerns. The legislature has particular concerns  
9 about negative impacts upon ranching operations. To protect  
10 these on-going operations and to ensure their future viability,  
11 this Act subordinates solar energy facility agricultural leases  
12 to all other agricultural leases with respect to lease  
13 extensions and renewals.

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

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



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



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

17 (6) The lessee shall not sublet the whole or any part of  
18 the demised premises except with the approval of the  
19 board; provided that prior to the approval, the board  
20 shall have the right to review and approve the rent to  
21 be charged to the sublessee; provided further that in  
22 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 nor any extension of any such lease, shall be issued  
16 by the State to any person to construct, use, or  
17 maintain a sunbathing or swimming pier or to use the  
18 lands for such purposes, unless such 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  
22 placed on the pier, clearly visible to the public,



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

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

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

12          (1) Modify or eliminate any of the restrictions specified  
13             in subsection (a);

14          (2) Extend or modify the fixed rental period of the lease;  
15             or

16          (3) Extend the term of the lease,

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



1 premises that are paid for by the lessee without institutional  
2 financing, such extension being based on the economic life of  
3 the improvements as determined by the board or an independent  
4 appraiser; provided that the approval of any extension shall be  
5 subject to the following:

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



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

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

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

19          (d) The board, from time to time, during the term of any  
20          agriculture, intensive agriculture, aquaculture, commercial,  
21          mariculture, special livestock, pasture, or industrial lease,  
22          may modify or eliminate any of the [{}restrictions[{}]] specified



1 in subsection (a), extend or modify the fixed rental period of  
2 the lease, or extend the term of the lease upon a showing of  
3 significant economic hardship directly caused by:

4 (1) State disaster, pursuant to chapter 209, including  
5 seismic or tidal wave, tsunami, hurricane, volcanic  
6 eruption, typhoon, earthquake, flood, or severe  
7 drought; or

8 (2) A taking of a portion of the area of the lease by  
9 government action by eminent domain, withdrawal, or  
10 conservation easement; provided that the portion taken  
11 shall not be less than ten per cent of the entire  
12 leased area unless otherwise approved by the board;  
13 and provided that the board determines that the lessee  
14 will not be adequately compensated pursuant to the  
15 lease provisions.

16 (e) The approval of any extension granted pursuant to  
17 subsection (d) shall be subject to the following:

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

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





1 (3) The rental shall not be less than the rental for the  
2 preceding term;

3 (4) 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; and

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

9 (f) Notwithstanding any other law to the contrary, any  
10 lease granted to a solar energy facility in an agricultural  
11 district under section 205-2(d)(6) shall be subordinate to any  
12 other agricultural lease with respect to an extension or renewal  
13 of a lease under this chapter."

14 SECTION 3. 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 4. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

Mel Camille

JAN 28 2009



**Report Title:**

Agricultural Lease; Solar Energy Facilities

**Description:**

Subordinates solar energy facility agricultural leases to all other agricultural leases with respect to lease extensions and renewals.

