



GOV. MSG. NO. 686

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 6, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB2951 SD2 HD2 CD1, without my approval, and with the statement of objections relating to the measure.

SB2951 SD2 HD2 CD1

A BILL FOR AN ACT
RELATING TO AGRICULTURE.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2010

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2951

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2951, entitled "A Bill for an Act Relating to Agriculture."

The purpose of this bill is to provide additional remedies to lessees of public land leases for intensive agricultural and pasture uses upon the withdrawal or taking of leased lands and to extend all remedies to such lessees when an easement is placed on the leased land that prevents the lessee from using the land as originally intended.

This bill is objectionable because it disproportionately and inappropriately compensates these lessees of public lands above other lessees of State lands. Current law, as embodied in Chapter 171 of Hawaii Revised Statutes, already provides procedures for the withdrawal of leased lands. Lessees must be given reasonable notice of the planned withdrawal. Their lease rents must be adjusted to reflect the portion of lands withdrawn and they must be compensated for the value of any improvements on the withdrawn portion. Further, if there are crops on the land, the lands cannot be withdrawn until the crops are harvested or the State pays for the value of the crops.

It should be noted these lessees have been paying rent well below market rates and enter into the leases knowing that

STATEMENT OF OBJECTIONS
SENATE BILL NO. 2951
Page 2

leased land may be withdrawn for public purposes. Extraordinary compensation for costs attributable to the diminished use of the leased land, for the value of breeding stock that are not a part of the real property, and for the placement of easements, will discourage and impede the use of public land for valid and necessary public purposes.

For the foregoing reasons, I am returning Senate Bill No. 2951 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", is written over the printed name.

LINDA LINGLE
Governor of Hawaii

VETO

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

S.B. NO. 2951
S.D. 2
H.D. 2
C.D. 1

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 to widen Saddle
2 Road, in the county of Hawaii, the department of land and
3 natural resources established conservation easements on public
4 land leased for pasture or special livestock use. Consequently,
5 the lessee ranchers suffered serious financial losses.

6 The department of land and natural resources established
7 conservation easements on approximately six thousand acres of
8 leased lands, preventing the lessees from grazing cattle and
9 effectively depriving the lessees of their use of the land.
10 Although the department of land and natural resources reduced
11 the lease rent in proportion to the taking of the land, the
12 lessees received no other compensation. The final report on
13 discussions with affected ranchers in connection with the Saddle
14 Road realignment project prepared in response to Act 236,
15 Session Laws of Hawaii 2001, states that the United States
16 Department of Transportation Highways Division will provide
17 compensation to the existing lessees. However, according to the
18 lessees, the department of land and natural resources has taken



1 the position that because Hawaii law did not provide for any
2 compensation, none was required.

3 Despite this lack of compensation, the lessees are required
4 by their leases to maintain insurance on the land and pay taxes
5 for the land. In addition, several lessees had to reduce their
6 herd and suffered financial losses as a result of the sale of
7 their cattle. One of the long-term effects of a reduced herd is
8 that lessees cannot mitigate the long-term, fixed costs
9 associated with operating a ranch in the way they anticipated
10 when the lease was negotiated. Thus, the lessees have
11 experienced financial hardship for an extended period of time
12 that is not sufficiently mitigated by a reduction in their lease
13 rent.

14 The purpose of this Act is to prevent situations similar to
15 the Saddle Road withdrawal from occurring in the future. This
16 Act is also intended to better provide for the viability and
17 survival of Hawaii's agricultural producers. This Act provides
18 fair compensation for lessees when the department of land and
19 natural resources takes or condemns any portion of the land,
20 preventing a lessee from using the land as originally intended.



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

4 **"§171- Withdrawal of leased land; fair compensation;**
5 **lease extension.** (a) Upon a withdrawal or taking of leased
6 land pursuant to section 171-37(3) that causes any portion of
7 the land to become unusable for the specific use or uses for
8 which it was leased, the lease rent shall be reduced in
9 proportion to the value of the land withdrawn or made unusable;
10 provided that if any permanent improvement made to or
11 constructed upon the land by the lessee is destroyed or made
12 unusable in the process of the withdrawal or taking, the
13 proportionate value thereof shall be paid to the lessee based
14 upon the unexpired term of the lease. No land that is under
15 cultivation shall be withdrawn or taken until the crops are
16 harvested, unless the board pays the lessee the value of the
17 crops. Upon a withdrawal, any person with a long-term lease
18 shall be compensated for the present value of all permanent
19 improvements in place at the time of the withdrawal that were
20 legally made to or constructed upon the land by the lessee of
21 the leased land being withdrawn. In the case of tree-crops, as
22 defined in section 171-37, the board shall pay to the lessee the



1 residual value of the trees taken and, if there are unharvested
2 crops, the value of the crops. In the case of breeding
3 livestock that cannot be relocated or marketed for the breeding
4 value, the board shall pay to the lessee the difference between
5 the appraised breeding value and the salvage value, including
6 the cost of transportation to market.

7 (b) In addition to compensation received pursuant to
8 subsection (a) or section 171-38, a lessee shall be entitled to
9 compensation for costs attributable to the diminished use of the
10 leased land, including but not limited to reimbursement for the
11 cost of any insurance required by the board to be maintained, or
12 property tax paid by the lessee; on land subject to easements,
13 if the easements are placed upon the land subsequent to the
14 original lease and prevent the lessee from using the land for
15 the original intended use."

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

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



- 1 (1) The lease term shall ~~[be]~~ be not less than fifteen
2 years nor more than thirty-five years, except that if
3 the type of disposition requires the lessee to occupy
4 the premises as the lessee's own personal residence,
5 ~~[it]~~ the lease term may be longer than thirty-five
6 years~~[, but]~~; provided that the lease term shall not
7 be in excess of seventy-five years, ~~[and]~~ except in
8 the case of a tree-crop orchard lease the term of
9 which shall not be in excess of forty-five years.
- 10 (2) If the land being leased is not immediately productive
11 and requires extensive expenditures for clearing,
12 conditioning of the soil, the securing of water, the
13 planting of grasses, or the construction of
14 improvements, as the result of which a longer term is
15 necessary to amortize the lessee's investment, then
16 the lease term may be longer than thirty-five years,
17 but not in excess of fifty-five years.
- 18 (3) The land leased hereunder, or any portion thereof,
19 shall be subject to withdrawal by the board ~~[of land~~
20 ~~and natural resources]~~ at any time during the term of
21 the lease with reasonable notice and ~~[without]~~
22 compensation, ~~[except as provided herein,]~~ as provided



1 in section 171- , for public uses or purposes,
2 including residential, commercial, industrial, or
3 resort developments, for constructing new roads or
4 extensions, or changes in line or grade of existing
5 roads, for rights-of-way and easements of all kinds,
6 and shall be subject to the right of the board to
7 remove soil, rock, or gravel as may be necessary for
8 the construction of roads and rights-of-way within or
9 without the demised premises [~~;~~ ~~provided that upon the~~
10 ~~withdrawal, or upon the taking which causes any~~
11 ~~portion of the land originally demised to become~~
12 ~~unusable for the specific use or uses for which it was~~
13 ~~demised, the rent shall be reduced in proportion to~~
14 ~~the value of the land withdrawn or made unusable, and~~
15 ~~if any permanent improvement constructed upon the land~~
16 ~~by the lessee is destroyed or made unusable in the~~
17 ~~process of the withdrawal or taking, the proportionate~~
18 ~~value thereof shall be paid based upon the unexpired~~
19 ~~term of the lease; provided further that no withdrawal~~
20 ~~or taking shall be had as to those portions of the~~
21 ~~land which are then under cultivation with crops until~~
22 ~~the crops are harvested, unless the board pays to the~~



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

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

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

15 "**§171-38 Condemnation of leases.** The lease shall provide
16 that whenever a portion of the public land under lease is
17 condemned for public purposes by the State, or any county or
18 city and county, or any other governmental agency or
19 subdivision, the rental shall be reduced in proportion to the
20 value of the portion of the premises condemned, and the lessee
21 shall be entitled to receive from the condemning authority:



1 (1) ~~[the]~~ The value of growing crops, if any, ~~[which]~~ that
2 the lessee is not permitted to harvest; and

3 (2) ~~[the]~~ The proportionate value of the lessee's
4 permanent improvements so taken in the proportion that
5 it bears to the unexpired term of the lease~~[-, provided~~
6 ~~that the]~~.

7 The lessee ~~[may]~~, in the alternative, may remove and relocate
8 the lessee's improvements to the remainder of the lands occupied
9 by the lessee. The foregoing rights of the lessee shall not be
10 exclusive of any other to which the lessee may be entitled by
11 law~~[-]~~, including those rights established in section 171- .

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

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



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

