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# A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 PART I

2 SECTION 1. The legislature finds that many of the leases  
3 for commercial, industrial, hotel, and resort properties on  
4 state land are nearing the end of the lease terms. Faced with  
5 the uncertainty of continued tenancy, lessees have little  
6 incentive to make major investments in improvements to their  
7 infrastructures and ensure the long-term maintenance of their  
8 facilities. As a result, the infrastructures on these  
9 properties have been deteriorating.

10 A 2003 study by the legislative reference bureau found  
11 that, for commercial and industrial zoned lands, much of the  
12 existing industrial inventory is "old, dilapidated, and in need  
13 of renovation or redevelopment." The study also found that the  
14 State of Hawaii is the largest landowner of leasehold commercial  
15 and industrial parcels.

16 The legislature further finds that improvements to  
17 commercial, hotel, resort, and industrial infrastructures are  
18 important to the growth and expansion of Hawaii businesses, and



1 for the enhancement of Hawaii's visitor infrastructure to  
2 accommodate the anticipated influx of visitors, particularly to  
3 east Hawaii, with direct mainland flights that have started in  
4 the summer of 2011.

5 The purpose of this part is to authorize the board of land  
6 and natural resources to authorize the extension of commercial,  
7 hotel, resort, and industrial leases for the lessees'  
8 substantial improvement to the leased premises.

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

12 "§171- Commercial, hotel, resort, or industrial leases;  
13 extension of term. (a) Notwithstanding section 171-36, the  
14 board may extend the lease term of public lands for commercial,  
15 hotel, resort, or industrial use upon the approval by the board  
16 of a development agreement proposed by the lessee or lessee and  
17 developer to make substantial improvements to the demised  
18 premises.

19 (b) Prior to entering into a development agreement, the  
20 lessee or lessee and developer shall submit to the board the  
21 plans and specifications for the total development being



1 proposed. The board shall review the plans and specifications  
2 and determine:

3 (1) Whether the development proposed in the development  
4 agreement is of sufficient worth and value to justify  
5 the extension of the lease;

6 (2) The estimated period of time to complete the  
7 improvements and expected date of completion of the  
8 improvements; and

9 (3) The minimum revised annual rent based on the fair  
10 market value of the lands to be developed, as  
11 determined by an appraiser for the board, and  
12 percentage rent where gross receipts exceed a  
13 specified amount.

14 No lease extension shall be approved until the board and the  
15 lessee or lessee and developer mutually agree to the terms and  
16 conditions of the development agreement.

17 (c) No construction shall commence until the lessee or  
18 lessee and developer have filed with the board a sufficient bond  
19 conditioned upon the full and faithful performance of all the  
20 terms and conditions of the development agreement.



1       (d) Any extension of a lease pursuant to this section  
2 shall be based upon the substantial improvements to be made and  
3 shall be for a period not longer than fifty-five years.

4       (e) Similar to the issuance of a new lease, any extension  
5 of a lease granted pursuant to this section shall be  
6 effectuated, documented, and executed using the most current  
7 lease form and leasing practices and policies of the board.

8       (f) The applicant for a lease extension shall pay all  
9 costs and expenses incurred by the department in connection with  
10 processing, analyzing, and negotiating any lease extension  
11 request and document, and the development agreement in  
12 subsections (a) and (b).

13       (g) As used in this section "substantial improvements"  
14 means any renovation, rehabilitation, reconstruction, or  
15 construction of the demised premises, including minimum  
16 requirements for off-site and on-site improvements, the cost of  
17 which equals or exceeds fifty per cent of the market value of  
18 the demised premises, that the lessee or lessee and developer  
19 shall install, construct, and complete by the date of completion  
20 of the total development."



1 PART II

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

7 The department of land and natural resources established  
8 conservation easements on approximately six thousand acres of  
9 leased lands, preventing the lessees from grazing cattle and  
10 effectively depriving the lessees of their use of the land.  
11 Although the department of land and natural resources reduced  
12 the lease rent in proportion to the taking of the land, the  
13 lessees received no other compensation. The final report on  
14 discussions with affected ranchers in connection with the Saddle  
15 road realignment project prepared in response to Act 236,  
16 Session Laws of Hawaii 2001, states that the United States  
17 Department of Transportation Highways Division will provide  
18 compensation to the existing lessees. However, according to the  
19 lessees, the department of land and natural resources has taken  
20 the position that because Hawaii law did not provide for any  
21 compensation, none was required.



1 Chapter 171, Hawaii Revised Statutes, provides for rent  
2 reductions if the land withdrawn causes the land to become  
3 unusable for the specific use or uses for which it was  
4 originally leased. However, the law provides no other method of  
5 compensation. Despite this lack of compensation, the lessees  
6 are required by their leases to maintain insurance on the land  
7 and pay taxes for the land they cannot use for the specific  
8 purpose for which it was originally leased.

9 In addition, several lessees had to reduce their herd and  
10 suffered financial losses as a result of the sale of their  
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 have experienced  
15 financial hardship for an extended period of time that is not  
16 sufficiently mitigated by a reduction in their lease rent.

17 S.B. No. 2951, C.D. 1, regular session of 2010, a measure  
18 that attempted to address this issue by providing fair  
19 compensation when leased public land for agricultural or  
20 pastoral uses is withdrawn, condemned, or taken for public  
21 purposes, passed the legislature but was vetoed by then-Governor  
22 Lingle on the grounds that the bill "disproportionately and



1 inappropriately compensates these lessees of public lands above  
 2 other lessees of State lands." In testimony opposing the  
 3 measure, the department of land and natural resources posited  
 4 that rent reduction under existing law is sufficiently fair, and  
 5 that easements do not prevent the lessee from making any  
 6 beneficial use of the land even when it prevents them from using  
 7 the land for its original intended purpose. However, the  
 8 legislature believes that rent reduction is insufficient,  
 9 especially where the lessor fails to recognize that the law is  
 10 designed to take into account the lessee's original intended  
 11 purpose for leasing the land, and finds that this Act is  
 12 necessary to provide more equitable relief to lessees of public  
 13 lands in partial takings or condemnations where the lessee is  
 14 prevented from using the lands as originally intended.

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

18 SECTION 4. Chapter 171, Hawaii Revised Statutes, is  
 19 amended by adding a new section to be appropriately designated  
 20 and to read as follows:

21 "§171- Withdrawal or taking of leased land; fair  
 22 compensation; lease extension. (a) Upon a withdrawal or taking



1 of leased land pursuant to section 171-37(3) that causes any  
2 portion of the land to become unusable for the specific use or  
3 uses for which it was leased, the lease rent shall be reduced in  
4 proportion to the value of the land withdrawn or made unusable;  
5 provided that if any permanent improvement made to or  
6 constructed upon the land by the lessee is destroyed or made  
7 unusable in the process of the withdrawal or taking, the  
8 proportionate value thereof shall be paid to the lessee based  
9 upon the unexpired term of the lease. No land that is under  
10 cultivation shall be withdrawn or taken until the crops are  
11 harvested, unless the board pays the lessee the value of the  
12 crops.

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

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





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

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

19 and the lessee shall be promptly notified of the determination;  
20 provided that should the lessee fail to agree upon the fair  
21 market value, the lessee may appoint the lessee's own livestock  
22 appraiser who together with the board's appraiser shall appoint



1 a third appraiser and the fair market value shall be determined  
2 by arbitration as provided in chapter 658A. The lessee shall  
3 pay for the lessee's own livestock appraiser, the board shall  
4 pay for the board's livestock appraiser, and the cost of the  
5 third livestock appraiser shall be borne equally by the lessee  
6 and the board. Whenever more than one livestock appraiser is  
7 appointed, each shall prepare and submit an independent  
8 appraisal report.

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

20 SECTION 5. Section 171-37, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§171-37 Lease restrictions; intensive agricultural and**  
2 **pasture uses.** In addition to the restrictions provided in  
3 section 171-36, the following restrictions shall apply to all  
4 leases for intensive agricultural and pasture uses:

5           (1) The lease term shall [~~be~~] not be less than fifteen  
6 years nor more than thirty-five years, except that if  
7 the type of disposition requires the lessee to occupy  
8 the premises as the lessee's own personal residence,  
9 [~~it~~] the lease term may be longer than thirty-five  
10 years[~~, but~~]; provided that the lease term shall not  
11 be in excess of seventy-five years, [and] except that  
12 in the case of a tree-crop orchard lease, the term [of  
13 which] shall not be in excess of forty-five years[~~;~~];

14           (2) If the land being leased is not immediately productive  
15 and requires extensive expenditures for clearing,  
16 conditioning of the soil, the securing of water, the  
17 planting of grasses, or the construction of  
18 improvements, as the result of which a longer term is  
19 necessary to amortize the lessee's investment, then  
20 the lease term may be longer than thirty-five years,  
21 but not in excess of fifty-five years[~~;~~]; and

1           (3) The land leased hereunder, or any portion thereof,  
2           shall be subject to withdrawal by the board [~~of land~~  
3           ~~and natural resources~~] at any time during the term of  
4           the lease with reasonable notice and [~~without~~  
5           ~~compensation, [except as provided herein,]~~ as provided  
6           in section 171-\_\_\_, for public uses or purposes,  
7           including residential, commercial, industrial, or  
8           resort developments, for constructing new roads or  
9           extensions, or changes in line or grade of existing  
10          roads, for rights-of-way and easements of all kinds,  
11          and shall be subject to the right of the board to  
12          remove soil, rock, or gravel as may be necessary for  
13          the construction of roads and rights-of-way within or  
14          without the demised premises [~~; provided that upon the~~  
15          ~~withdrawal, or upon the taking which causes any~~  
16          ~~portion of the land originally demised to become~~  
17          ~~unusable for the specific use or uses for which it was~~  
18          ~~demised, the rent shall be reduced in proportion to~~  
19          ~~the value of the land withdrawn or made unusable, and~~  
20          ~~if any permanent improvement constructed upon the land~~  
21          ~~by the lessee is destroyed or made unusable in the~~  
22          ~~process of the withdrawal or taking, the proportionate~~



1 ~~value thereof shall be paid based upon the unexpired~~  
2 ~~term of the lease; provided further that no withdrawal~~  
3 ~~or taking shall be had as to those portions of the~~  
4 ~~land which are then under cultivation with crops until~~  
5 ~~the crops are harvested, unless the board pays to the~~  
6 ~~lessee the value of the crops; and provided further~~  
7 ~~that upon withdrawal any person with a long term lease~~  
8 ~~shall be compensated for the present value of all~~  
9 ~~permanent improvements in place at the time of~~  
10 ~~withdrawal that were legally constructed upon the land~~  
11 ~~by the lessee to the leased land being withdrawn. In~~  
12 ~~the case of tree crops, the board shall pay to the~~  
13 ~~lessee the residual value of the trees taken and, if~~  
14 ~~there are unharvested crops, the value of the crops~~  
15 ~~also].~~

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

18 SECTION 6. Section 171-38, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§171-38 Condemnation of leases.** The lease shall provide  
21 that whenever a portion of the public land under lease is  
22 condemned for public purposes by the State, or any county or



1 city and county, or any other governmental agency or  
2 subdivision, the rental shall be reduced in proportion to the  
3 value of the portion of the premises condemned, and the lessee  
4 shall be entitled to receive from the condemning authority:

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

7 (2) ~~[the]~~ The proportionate value of the lessee's  
8 permanent improvements so taken in the proportion that  
9 it bears to the unexpired term of the lease~~[-, provided~~  
10 ~~that the]~~.

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

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



1 PART III

2 SECTION 7. This Act does not affect rights and duties that  
3 matured, penalties that were incurred, and proceedings that were  
4 begun before its effective date.

5 SECTION 8. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect on July 1, 2012.



**Report Title:**

Public Lands; Leases; Fair Compensation

**Description:**

Provides for fair compensation when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes. Authorizes the Board of Land and Natural Resources to extend commercial, hotel, resort, and industrial leases when the lessee makes qualifying substantial improvements to the leased land. Effective July 1, 2012. (HB1617 CD1)

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