
A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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4 reductions if the land withdrawn causes the land to become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

11 In addition, several lessees had to reduce their herd and
12 suffered financial losses as a result of the sale of their
13 cattle. One of the long-term effects of a reduced herd is that
14 lessees cannot mitigate the long-term, fixed costs associated
15 with operating a ranch in the way they anticipated when the
16 lease was negotiated. Thus, the lessees have experienced
17 financial hardship for an extended period of time that is not
18 sufficiently mitigated by a reduction in their lease rent.

19 S.B. No. 2951, C.D. 1, regular session of 2010, a measure
20 that attempted to address this issue by providing fair
21 compensation when leased public land for agricultural or
22 pastoral uses is withdrawn, condemned, or taken for public



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

17 The legislature again addressed this issue during the
18 regular session of 2012 by passing H.B. No. 1617, H.D. 2, S.D.
19 2, C.D. 1, which, among other things, provided for fair
20 compensation when leased public land for agricultural or
21 pastoral uses is withdrawn, condemned, or taken for public
22 purposes. Similar to previous efforts, the measure was vetoed



1 by Governor Abercrombie. However, Governor Abercrombie
2 indicated that he vetoed the measure on grounds unrelated to
3 agricultural and pastoral leases and that he would work with
4 stakeholders during the regular session of 2013 to pass these
5 provisions again.

6 Accordingly, the purpose of this Act is to provide fair
7 compensation to lessees when a withdrawal or taking of leased
8 land renders the land unusable for the lessees' original
9 intended purposes.

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

13 "§171- Withdrawal or taking of leased land; fair
14 compensation; lease extension. (a) Upon a withdrawal or taking
15 of leased land pursuant to section 171-37(3) that causes any
16 portion of the land to become unusable for the specific use or
17 uses for which it was leased, the lease rent shall be reduced in
18 proportion to the value of the land withdrawn or made unusable;
19 provided that if any permanent improvement made to or
20 constructed upon the land by the lessee is destroyed or made
21 unusable in the process of the withdrawal or taking, the
22 proportionate value thereof shall be paid to the lessee based



1 upon the unexpired term of the lease. No land that is under
2 cultivation shall be withdrawn or taken until the crops are
3 harvested, unless the board pays the lessee the value of the
4 crops.

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

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

14 In the case of breeding livestock that cannot be relocated
15 or marketed for the breeding value, the board shall pay to the
16 lessee the difference between the appraised breeding value and
17 the salvage value, including the cost of transportation to a
18 market on the island on which the leased land is located. If
19 there is disagreement between the board and the lessee as to the
20 number of breeding livestock that cannot be relocated or
21 marketed for breeding value, the issue shall be submitted to the
22 department of agriculture to make a determination, which shall



1 be final. The appraised breeding value shall be the fair market
2 value of the livestock, as opposed to net present value, at the
3 time the board approves the withdrawal or taking of a portion or
4 all of the leased land. The fair market value shall be
5 determined by:

6 (1) An employee of the department of agriculture qualified
7 to appraise livestock; or

8 (2) A disinterested livestock appraiser whose services
9 shall be contracted for by the board;

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



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

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

14 "**§171-37 Lease restrictions; intensive agricultural and**
15 **pasture uses.** In addition to the restrictions provided in
16 section 171-36, the following restrictions shall apply to all
17 leases for intensive agricultural and pasture uses:

18 (1) The lease term shall [~~be~~] not be less than fifteen
19 years nor more than thirty-five years, except that if
20 the type of disposition requires the lessee to occupy
21 the premises as the lessee's own personal residence,
22 [~~it~~] the lease term may be longer than thirty-five



1 years [~~but~~]; provided that the lease term shall not
2 be in excess of seventy-five years, [and] except that
3 in the case of a tree-crop orchard lease, the term [~~of~~
4 ~~which~~] shall not be in excess of forty-five years [~~and~~];

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

13 (3) The land leased hereunder, or any portion thereof,
14 shall be subject to withdrawal by the board [~~of land~~
15 ~~and natural resources~~] at any time during the term of
16 the lease with reasonable notice and [~~without~~]
17 compensation, [~~except as provided herein,~~] as provided
18 in section 171- , for public uses or purposes,
19 including residential, commercial, industrial, or
20 resort developments, for constructing new roads or
21 extensions, or changes in line or grade of existing
22 roads, for rights-of-way and easements of all kinds,



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



1 ~~by the lessee to the leased land being withdrawn. In~~
2 ~~the case of tree crops, the board shall pay to the~~
3 ~~lessee the residual value of the trees taken and, if~~
4 ~~there are unharvested crops, the value of the crops~~
5 ~~also].~~

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

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

10 "**§171-38 Condemnation of leases.** The lease shall provide
11 that whenever a portion of the public land under lease is
12 condemned for public purposes by the State, or any county or
13 city and county, or any other governmental agency or
14 subdivision, the rental shall be reduced in proportion to the
15 value of the portion of the premises condemned, and the lessee
16 shall be entitled to receive from the condemning authority:

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

19 (2) ~~[the]~~ The proportionate value of the lessee's
20 permanent improvements ~~[se]~~ taken in the proportion
21 that it bears to the unexpired term of the lease ~~[r~~
22 ~~provided that the]~~.



1 The lessee [~~may~~], in the alternative, may remove and relocate
 2 the lessee's improvements to the remainder of the lands occupied
 3 by the lessee. The foregoing rights of the lessee shall not be
 4 exclusive of any other to which the lessee may be entitled by
 5 law[~~-~~], including those rights established in section 171-_____.
 6 Where the portion [~~se~~] taken renders the remainder unsuitable
 7 for the uses for which the land was leased, the lessee shall
 8 have the option to surrender the lessee's lease and be
 9 discharged for any further liability therefor; provided that the
 10 lessee may remove the lessee's permanent improvements within
 11 [~~such~~] a reasonable period allowed by the board [~~of land and~~
 12 ~~natural resources~~]."

13 SECTION 5. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

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H.B. NO. 280

Report Title:

Public Lands; Leases; Fair Compensation

Description:

Provides for fair compensation when a withdrawal or taking of leased public land renders the land unusable for the lessees' original intended purpose.

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