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# A BILL FOR AN ACT

RELATING TO AUTHORIZING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO LEASE PASTURE LANDS ON TERMS THAT PROMOTE COLLABORATIVE BENEFICIAL USE FOR FORESTRY, WILDLIFE, RECREATIONAL, AND FOOD PRODUCTION PURPOSES.

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

1           SECTION 1. The legislature finds that many state pasture  
2 lessees have requested the department of land and natural  
3 resources to transfer their leases to the department of  
4 agriculture for management because the department of agriculture  
5 has greater flexibility under chapter 166E, Hawaii Revised  
6 Statutes, to amend, extend, and issue new leases by negotiation.  
7 The department of land and natural resources has not acted on  
8 the requests of its pasture lessees because of the high natural  
9 resource value of certain pasture lands, their proximity to  
10 forest reserves, or their importance in providing access to  
11 other public lands for hunting or public recreation purposes.  
12           The legislature further finds that the perceived need to  
13 transfer pasture leases to the department of agriculture can be  
14 relieved by providing the department of land and natural



1 resources with statutory powers similar to those exercised by  
2 the department of agriculture in the management of its leases.

3 The purpose of this Act is to:

4 (1) Authorize the board of land and natural resources to  
5 amend or extend pasture leases for public purposes;

6 (2) Authorize the board of land and natural resources to  
7 issue pasture leases by direct negotiation for public  
8 purposes; and

9 (3) Establish a process to dispose of lands that may  
10 qualify as transferable lands under Act 90, Session  
11 Laws of Hawaii 2003, but whose land use classification  
12 is in dispute between the department of land and  
13 natural resources and department of agriculture.

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:

19 (1) Options for renewal of terms are prohibited;

20 (2) No lease shall be for a longer term than sixty-five  
21 years, except in the case of a residential leasehold,



1           which may provide for an initial term of fifty-five  
2           years with the privilege of extension to meet the  
3           requirements of the Federal Housing Administration,  
4           Federal National Mortgage Association, Federal Land  
5           Bank of Berkeley, Federal Intermediate Credit Bank of  
6           Berkeley, Berkeley Bank for Cooperatives, or  
7           Department of Veterans Affairs requirements; provided  
8           that the aggregate of the initial term and extension  
9           shall in no event exceed seventy-five years;

10          (3) No lease shall be made for any land under a lease that  
11           has more than two years to run;

12          (4) No lease shall be made to any person who is in arrears  
13           in the payment of taxes, rents, or other obligations  
14           owed to the State or any county;

15          (5) No lease shall be transferable or assignable, except  
16           by devise, bequest, or intestate succession; provided  
17           that with the approval of the board, the assignment  
18           and transfer of a lease or unit thereof may be made in  
19           accordance with current industry standards, as  
20           determined by the board; provided further that prior  
21           to the approval of any assignment of lease, the board



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

14 (6) The lessee shall not sublet the whole or any part of  
15 the demised premises, except with the approval of the  
16 board; provided that prior to the approval, the board  
17 shall have the right to review and approve the rent to  
18 be charged to the sublessee; provided further that in  
19 the case where the lessee is required to pay rent  
20 based on a percentage of its gross receipts, the  
21 receipts of the sublessee shall be included as part of



1 the lessee's gross receipts; provided further that the  
2 board shall have the right to review and, if  
3 necessary, revise the rent of the demised premises  
4 based upon the rental rate charged to the sublessee,  
5 including the percentage rent, if applicable, and  
6 provided that the rent may not be revised downward;

7 (7) The lease shall be for a specific use or uses and  
8 shall not include waste lands, unless it is  
9 impractical to provide otherwise;

10 (8) Mineral and metallic rights and surface and ground  
11 water shall be reserved to the State; and

12 (9) No lease of public lands, including submerged lands,  
13 or any extension of any lease of public lands shall be  
14 issued by the State to any person to construct, use,  
15 or maintain a sunbathing or swimming pier or to use  
16 the lands for those purposes, unless the lease, or any  
17 extension thereof, contains provisions permitting the  
18 general public to use the pier facilities on the  
19 public lands and requiring that a sign or signs be  
20 placed on the pier, clearly visible to the public,  
21 that indicates the public's right to the use of the



1 pier. The board, at the earliest practicable date,  
2 and where legally possible, shall cause all existing  
3 leases to be amended to conform to this paragraph.  
4 The term "lease", for the purposes of this paragraph,  
5 includes month-to-month rental agreements and similar  
6 tenancies.

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

- 11 (1) Modify or eliminate any of the restrictions specified  
12 in subsection (a);
- 13 (2) Extend or modify the fixed rental period of the lease;  
14 provided that the aggregate of the initial term and  
15 any extension granted shall not exceed sixty-five  
16 years; or
- 17 (3) Extend the term of the lease,  
18 to the extent necessary to qualify the lease for mortgage  
19 lending or guaranty purposes with any federal mortgage lending  
20 agency, to qualify the lessee for any state or private lending  
21 institution loan, private loan guaranteed by the State, or any



1 loan in which the State and any private lender participates, or  
2 to amortize the cost of substantial improvements to the demised  
3 premises that are paid for by the lessee without institutional  
4 financing.

5 (c) Any extension authorized pursuant to subsection (b)  
6 shall be based on the economic life of the improvements as  
7 determined by the board or an independent appraiser; provided  
8 that the approval of any extension shall be subject to the  
9 following:

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

1           (6) Where improvements are financed by the lessee, the  
2           lessee shall submit receipts of expenditures within a  
3           time period specified by the board or else the lease  
4           extension shall be canceled; and

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

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

- 18           (1) The application of the lessee;  
19           (2) Consent of each holder of record having a security  
20          interest in the leasehold; and





1           (3) A finding by the board that the alternative use or  
2           uses are in the public interest.

3           (e) The board, from time to time during the term of any  
4           agriculture, intensive agriculture, aquaculture, commercial,  
5           mariculture, special livestock, pasture, or industrial lease,  
6           may modify or eliminate any of the restrictions specified in  
7           subsection (a), extend or modify the fixed rental period of the  
8           lease, or extend the term of the lease upon a showing of  
9           significant economic hardship directly caused by:

10           (1) State disaster, pursuant to chapter 209, including  
11           seismic or tidal wave, tsunami, hurricane, volcanic  
12           eruption, typhoon, earthquake, flood, or severe  
13           drought; or

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



1 (f) The approval of any extension granted pursuant to  
2 subsection (e) shall be subject to the following:

3 (1) The demised premises have been used substantially for  
4 the purposes for which they were originally leased;

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

7 (3) The rental shall not be less than the rental for the  
8 preceding term;

9 (4) The rules of the board setting forth any additional  
10 terms and conditions, which shall ensure and promote  
11 the purposes of the demised lands; and

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

15 (g) Any provision of this chapter to the contrary  
16 notwithstanding, the board may amend and extend pasture leases  
17 to further public purposes, subject to the following:

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



1       (2) The aggregate of the initial term and any extension  
2       granted shall not be for more than ninety-nine years;  
3       and

4       (3) The public land has key characteristics that would  
5       benefit from the amendment and extension of a pasture  
6       lease, such as the capacity for public purposes to be  
7       promoted through a lease amendment and extension.

8       Notwithstanding section 171-17, the chairperson may set the  
9       lease rent for the period of the lease term occurring after an  
10      amendment under this section. In arriving at a rental value,  
11      the chairperson may also consider: the specified use of the  
12      land; any restriction on grazing or other beneficial uses of the  
13      land or portions thereof by the lessee; and any withdrawal of  
14      lands from the lease premises. If an independent appraisal is  
15      procured to determine rent for an amended pasture lease, the  
16      chairperson may apply a lower rate of return if warranted after  
17      consideration of the public purpose served by the lease, use  
18      restrictions thereunder, and any obligation of the lessee to  
19      provide conservation or stewardship services."

20       SECTION 3. Section 171-59, Hawaii Revised Statutes, is  
21      amended to read as follows:



1           "§171-59 Disposition by negotiation. (a) A lease of  
2 public land may be disposed of through negotiation upon a  
3 finding by the board of land and natural resources that the  
4 public interest demands it. Where the public land is being  
5 sought under this section by a sugar or pineapple company, and  
6 the company is the owner or operator of a mill or cannery, then,  
7 for the purposes of this section, the economic unit shall be  
8 that acreage of public land which when taken together with the  
9 lands already owned or controlled or available to the company,  
10 when cultivated is found by the board to be necessary for the  
11 company's optimum mill or cannery operation. In all other  
12 cases, public land to be sold under this section shall be an  
13 economic unit as provided in section 171-33(3).

14           After a determination is made to negotiate the disposition  
15 of a lease, the board shall:

16           (1) Give public notice as in public auction, in accordance  
17 with the procedure set forth in section 171-16(a), of  
18 its intention to lease public land through negotiation  
19 setting forth the minimum conditions thereunder, the  
20 use for which the public land will be leased. Any  
21 person interested in securing the lease shall file an



1 application with the board not later than forty-five  
2 days after the first publication of the notice;

3 (2) Establish reasonable criteria for the selection of the  
4 lessee; provided that where the intended use of the  
5 land is agriculture, the department of agriculture  
6 shall establish the criteria;

7 (3) Determine the applicants who meet the criteria for  
8 selection set by the board or the department of  
9 agriculture, as the case may be, and notify all  
10 applicants of its determination. Any applicant may  
11 examine the basis of the determination, which shall be  
12 in writing, to ascertain whether or not the conditions  
13 and criteria established by the board or the  
14 department of agriculture were followed; provided that  
15 if any applicant does not notify the board of the  
16 applicant's objections, and the grounds therefor, in  
17 writing, within twenty days of the receipt of the  
18 notice, the applicant shall be barred from proceeding  
19 to seek legal remedy for any alleged failure of the  
20 board to follow the conditions and criteria.



1           If only one applicant meets the criteria for selection of  
2 the lessee, the board may, after notice as provided in (3),  
3 above, dispose of the lease by negotiation.

4           If two or more applicants meet the criteria for the  
5 selection of the lessee, the board shall select the lessee who  
6 submits the highest offer contained in a sealed bid deposited  
7 with the board.

8           (b) Disposition of public lands for airline, aircraft,  
9 airport-related, agricultural processing, cattle feed  
10 production, aquaculture, marine, maritime, and maritime-related  
11 operations may be negotiated without regard to the limitations  
12 set forth in subsection (a) and section 171-16(c); provided  
13 that:

14           (1) The disposition encourages competition within the  
15 aeronautical, airport-related, agricultural,  
16 aquaculture, maritime, and maritime-related  
17 operations;

18           (2) The disposition shall not exceed a maximum term of  
19 thirty-five years, except in the case of:



1 (A) Maritime and maritime-related operations, which  
2 may provide for a maximum term of seventy years;  
3 and

4 (B) Aquaculture operations, which may provide for a  
5 maximum term of sixty-five years; provided that  
6 aquaculture operations in good standing may seek  
7 to renew a lease issued under this section and,  
8 during the lease term, may engage in supportive  
9 activities that are related to or integrated with  
10 aquaculture; and

11 (3) The method of disposition of public lands for cattle  
12 feed production as set forth in this subsection shall  
13 not apply after December 31, 1988.

14 For the purposes of this subsection:

15 "Agricultural processing" means the processing of  
16 agricultural products, including dairying, grown, raised, or  
17 produced in Hawaii.

18 "Airport-related" means a purpose or activity that requires  
19 air transportation to achieve that purpose or activity; or an  
20 activity that generates revenue for the airport system as  
21 provided in section 261-7.



1 "Aquaculture" means the propagation, cultivation, or  
2 farming of aquatic plants and animals in controlled or selected  
3 environments for research, commercial, or stocking purposes,  
4 including aquaponics or any growing of plants or animals with  
5 aquaculture effluents.

6 "Maritime-related" means a purpose or activity that  
7 requires and is directly related to the loading, off-loading,  
8 storage, or distribution of goods and services of the maritime  
9 industry.

10 (c) Any provision of this chapter to the contrary  
11 notwithstanding, the board may issue pasture leases by direct  
12 negotiation and without recourse to public auction for lands  
13 already under pasture use when doing so will further public  
14 purposes; provided that the term of any pasture lease issued  
15 under this subsection shall not be for more than sixty-five  
16 years.

17 Notwithstanding section 171-17, the chairperson may set the  
18 rent for pasture leases issued under this subsection on such  
19 terms and conditions as the chairperson may determine, including  
20 but not limited to a value that incentivizes or otherwise  
21 promotes ranching operations compatible with the public purposes





1 for whose promotion the department is responsible. If an  
2 independent appraisal is procured to determine rent for a  
3 pasture lease, the chairperson may apply a lower rate of return  
4 if warranted after consideration of the public purpose served by  
5 the lease, use restrictions thereunder, and any obligation of  
6 the lessee to provide conservation or stewardship services."

7 SECTION 4. No later than \_\_\_\_\_, the department of  
8 land and natural resources and department of agriculture shall  
9 identify lands in limbo. Upon identification of lands in limbo,  
10 the department of land and natural resources and department of  
11 agriculture shall submit a petition to the land use commission  
12 to determine whether the lands in limbo are bona fide  
13 agricultural land, including pasture land, or conservation land.  
14 After a determination by the land use commission, the department  
15 of land and natural resources shall dispose of the lands in  
16 limbo as appropriate.

17 For purposes of this section, "lands in limbo" means state  
18 lands managed by the department of land and natural resources  
19 that may qualify for transfer to the department of agriculture  
20 under Act 90, Session Laws of Hawaii 2003, but have not been  
21 transferred because of a dispute between the department of land



1 and natural resources and department of agriculture as to the  
2 land use classification of the land.

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

6 SECTION 6. New statutory material is underscored.

7 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

Public Lands; Leasing for Pasture Use; Land Use Commission;  
Disposition

**Description:**

Authorizes the Board of Land and Natural Resources to amend and extend existing pasture leases and to issue new pasture leases by negotiation in furtherance of public purposes. Requires DLNR and DOA to identify potentially transferable lands whose land use classification is at dispute and petition the land use commission for a determination. Effective 7/1/2050. (HD1)

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