RELATING TO AGRICULTURE.

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

SECTION 1. The legislature finds that to widen Saddle Road, in the county of Hawaii, the department of land and natural resources established conservation easements on public land leased for pasture or special livestock use. Consequently, the lessee ranchers suffered serious financial losses.

The department of land and natural resources established conservation easements on approximately six thousand acres of leased lands, preventing the lessees from grazing cattle and effectively depriving the lessees of their use of the land.

Although the department of land and natural resources reduced the lease rent in proportion to the taking of the land, the lessees received no other compensation. The final report on discussions with affected ranchers in connection with the Saddle Road realignment project prepared in response to Act 236, Session Laws of Hawaii 2001, states that the United States Department of Transportation Highways Division will provide compensation to the existing lessees. However, according to the
lessees, the department of land and natural resources has taken
the position that because Hawaii law did not provide for any
compensation, none was required.

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

According to some lessees, the banking industry responded
to the conservation easements by reducing the valuation of the
lease interest. Consequently, banks are not recognizing
leasehold interests in land as an asset.

The legislature believes that by providing an automatic
lease extension when a withdrawal, taking, or condemnation of
land occurs, lenders are more likely to accept leases as assets.
This, in turn, will assist the lessees with obtaining much needed capital.

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

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

"§171- Withdrawal of leased land; fair compensation; lease extension. (a) Upon the withdrawal or taking of leased land pursuant to section 171-37(3), which causes any portion of the land to become unusable for the specific use or uses for which it was intended, the lease rent shall be reduced in proportion to the value of the land withdrawn or made unusable; provided that if any permanent improvement constructed upon the land by the lessee is destroyed or made unusable in the process..."
of the withdrawal or taking, the proportionate value thereof shall be paid to the lessee based upon the unexpired term of the lease. No withdrawal or taking shall apply to land that is under cultivation until the crops are harvested, unless the board pays the lessee the value of the crops. Upon a withdrawal, any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of the withdrawal that were legally constructed upon the land by the lessee of the leased land being withdrawn. In the case of tree crops, as defined in section 171-37, the board shall pay to the lessee the residual value of the trees taken and, if there are unharvested crops, the value of the crops.

(b) In addition to compensation received pursuant to subsection (a) or section 171-38, a lessee shall be entitled to compensation for costs attributable to the diminished use of the leased land, including but not limited to:

(1) Reimbursement for any insurance costs associated with the withdrawn leased land; and

(2) Loss of reasonably anticipated income associated with the withdrawn leased land.
(c) In addition to any compensation received pursuant to subsections (a) and (b), upon request by the lessee, the board shall extend a lease subject to a withdrawal or taking, pursuant to section 171-37, or a condemnation, pursuant to section 171-38, for not more than the number of years remaining in the original lease. The extended lease shall consist of terms and conditions consistent with applicable law."

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

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

(1) The lease term shall [be] not be less than fifteen years nor more than thirty-five years, except that if the type of disposition requires the lessee to occupy the premises as the lessee's own personal residence, it may be longer than thirty-five years, or except as provided in subsection 171-____ (c), but not in excess of seventy-five years, and except in the case of a tree-crop orchard lease the term of which shall not be in excess of forty-five years.
(2) If the land being leased is not immediately productive and requires extensive expenditures for clearing, conditioning of the soil, the securing of water, the planting of grasses, or the construction of improvements, as the result of which a longer term is necessary to amortize the lessee's investment, then the lease term may be longer than thirty-five years, but not in excess of fifty-five years.

(3) The land leased hereunder, or any portion thereof, shall be subject to withdrawal by the board [of land and natural resources] at any time during the term of the lease with reasonable notice and [without] compensation, [except as provided herein,] as provided in section 171-__, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises[; provided that upon the
withdrawal, or upon the taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided further that no withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of the crops; and provided further that upon withdrawal any person with a long term lease shall be compensated for the present value of all permanent improvements in place at the time of withdrawal that were legally constructed upon the land by the lessee to the leased land being withdrawn. In the case of tree crops, the board shall pay to the lessee the residual value of the trees taken and, if
there are unharvested crops, the value of the crops also].

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

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

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

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

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

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

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

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

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

SECTION 7. This Act shall take effect upon its approval.
Report Title:
Public Lands; Leasehold; Agricultural Uses; Condemnation; Withdrawal; Compensation; Lease Extension

Description:
Provides for fair compensation, including an automatic lease extension, when leased public land for agricultural or pastoral uses is withdrawn, condemned, or taken for public purposes.
(CD1)