



GOV. MSG. NO. 1390

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 10, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

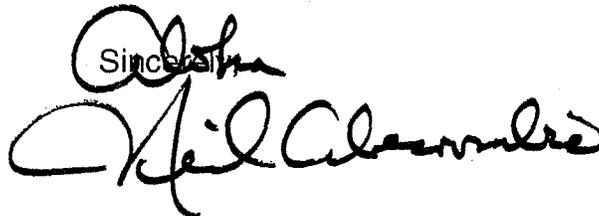
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

I am transmitting herewith HB1617 HD2 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB1617 HD2 SD2 CD1

RELATING TO PUBLIC LANDS.

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2012

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1617

Honorable Members
Twenty-Sixth Legislature
State of Hawaii

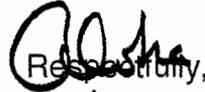
Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1617, entitled "A Bill for an Act Relating to Public Lands."

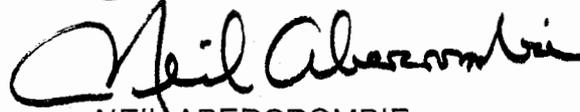
The purposes of this bill are to: (1) authorize the Board of Land and Natural Resources to extend, for a period not longer than fifty-five years, commercial, hotel, resort, and industrial leases, when the lessee makes qualifying substantial improvements to the leased land; and (2) provide fair compensation when leased public land for agricultural and pastoral uses is withdrawn, condemned, or taken for public purposes. The compensation shall be in the form of rent reduction, value of permanent improvements, crop value, livestock value, or costs attributable to the diminished use of the land.

Part I of the bill on commercial, hotel, resort, and industrial lease extensions is so broad as to cover virtually every such Department of Land and Natural Resources lease transaction in the state. The bill will allow a lessee to keep exclusive use of public lands for up to 120 years, which is beyond the lifespan of the business owner and unfair to other businesses who desire an opportunity to bid on and use public lands. There is nothing to prevent present lessees from re-bidding subject lands in any subsequent offering. I have no objection to part II of the bill on agricultural and pastoral leases and will work with stakeholders next session to pass these provisions again.

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 1617
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For the foregoing reasons, I am returning House Bill No. 1617 without my approval.


Respectfully,



NEIL ABERCROMBIE
Governor of Hawaii

ORIGINAL

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

VETO
H.B. NO. 1617
H.D. 2
S.D. 2
C.D. 1

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.

APPROVED this day of , 2012

GOVERNOR OF THE STATE OF HAWAII

