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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 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



1 lessees, the department of land and natural resources has taken  
2 the position that because Hawaii law did not provide for any  
3 compensation, none was required.

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5 reductions if the land withdrawn causes the land to become  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

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

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



1 pastoral uses is withdrawn, condemned, or taken for public  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

18 The purpose of this part is to provide fair compensation to  
19 lessees when a withdrawal or taking of leased land renders the  
20 land unusable for the lessee's original intended purpose.



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

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

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



1 In the case of tree-crops, as defined in section 171-37,  
2 the board shall pay to the lessee the residual value of the  
3 trees taken and, if there are unharvested crops, the value of  
4 the crops.

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

19 (1) An employee of the department of agriculture qualified  
20 to appraise livestock; or

21 (2) A disinterested livestock appraiser whose services  
22 shall be contracted for by the board,



1 and the lessee shall be promptly notified of the determination;  
2 provided that should the lessee fail to agree upon the fair  
3 market value, the lessee may appoint its own livestock appraiser  
4 who together with the board's appraiser shall appoint a new  
5 appraiser and the fair market value shall be determined by  
6 arbitration pursuant to chapter 658A. The lessee shall pay for  
7 the lessee's appointed livestock appraiser, the board shall pay  
8 for the board's livestock appraiser, and the cost of any jointly  
9 appointed livestock appraiser shall be borne equally by the  
10 lessee and the board. Whenever more than one livestock  
11 appraiser is appointed, each shall prepare and submit an  
12 independent appraisal report.

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



1 subsequent to the original lease and prevent the lessee from  
2 using the land for the original intended use."

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

5 "**§171-37 Lease restrictions; intensive agricultural and**  
6 **pasture uses.** In addition to the restrictions provided in  
7 section 171-36, the following restrictions shall apply to all  
8 leases for intensive agricultural and pasture uses:

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

18 (2) If the land being leased is not immediately productive  
19 and requires extensive expenditures for clearing,  
20 conditioning of the soil, the securing of water, the  
21 planting of grasses, or the construction of  
22 improvements, as the result of which a longer term is



1 necessary to amortize the lessee's investment, then  
2 the lease term may be longer than thirty-five years,  
3 but not in excess of fifty-five years~~[-]; and~~

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





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

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

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



1           "§171-38 **Condemnation of leases.** The lease shall provide  
2 that whenever a portion of the public land under lease is  
3 condemned for public purposes by the State, or any county or  
4 city and county, or any other governmental agency or  
5 subdivision, the rental shall be reduced in proportion to the  
6 value of the portion of the premises condemned, and the lessee  
7 shall be entitled to receive from the condemning authority:

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

10          (2) ~~[the]~~ The proportionate value of the lessee's  
11          permanent improvements so taken in the proportion that  
12          it bears to the unexpired term of the lease~~[-; provided~~  
13          ~~that the]~~.

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

19 Where the portion so taken renders the remainder unsuitable for  
20 the uses for which the land was leased, the lessee shall have  
21 the option to surrender the lessee's lease and be discharged for  
22 any further liability therefor; provided that the lessee may



1 remove the lessee's permanent improvements within [~~such~~] a  
2 reasonable period allowed by the board [~~of land and natural~~  
3 ~~resources~~]."

4 PART II

5 SECTION 5. The legislature finds that the agribusiness  
6 development corporation was created as a rapid response agency  
7 to stabilize deteriorating plantation water systems and vacant  
8 plantation lands and transition these lands and infrastructure  
9 into use for diversified agriculture. It was designed to be  
10 entrepreneurial in practice, with exemptions to quickly put  
11 diversified farmers onto land and settle issues related to the  
12 difficult and complex transition process. The agribusiness  
13 development corporation is a more appropriate agency, as it is  
14 more familiar with the agriculture industry, to manage public  
15 lands within the agricultural land use district that are  
16 currently managed by the department of land and natural  
17 resources.

18 The purpose of this part is to transfer the parcels of land  
19 identified by tax map key numbers (9)4-0-12:001, (9)4-0-12:002,  
20 and (9)4-0-12:003 to the agribusiness development corporation no  
21 later than January 1, 2013.



1 SECTION 6. Upon approval of the governor, board of  
 2 agriculture, and board of land and natural resources, Executive  
 3 Order No. 4403 setting aside the parcels of land identified by  
 4 tax map key numbers (1) 9-4-012:001, (1) 9-4-012:002, and (1) 9-  
 5 4-012:003 to the department of agriculture shall be canceled.  
 6 Upon cancellation of Executive Order No. 4403, the parcels of  
 7 land identified by tax map key numbers (1) 9-4-012:001, (1) 9-4-  
 8 012:002, and (1) 9-4-012:003 shall be transferred by set aside  
 9 to the agribusiness development corporation. The transfer of  
 10 the parcels of land to the agribusiness development corporation  
 11 shall occur no later than January 1, 2013.

12 SECTION 7. All rights, powers, functions, and duties of  
 13 the department of land and natural resources or board of land  
 14 and natural resources relating to the lands transferred to the  
 15 agribusiness development corporation shall be transferred with  
 16 the lands to which they relate.

17 Every reference to the department of land and natural  
 18 resources or board of land and natural resources in all deeds,  
 19 leases, contracts, loans, agreements, permits, or other  
 20 documents executed or entered into by or on behalf of the  
 21 department or board with respect to the lands transferred shall  
 22 be construed as a reference to the agribusiness development



1 corporation or the board of directors of the agribusiness  
2 development corporation, as appropriate.

3 PART III

4 SECTION 8. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun before its effective date.

7 SECTION 9. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 10. This Act shall take effect on July 1, 2050;  
10 provided that part II of this Act shall take effect on July 1,  
11 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. Cancels executive order 4403 and transfers TMKs (1)9-4-012:001, (1)9-4-012:002, and (1)9-4-012:003 located in Kunia, Oahu, to the agribusiness development corporation no later than January 1, 2013. Effective 07/01/2050. (SD2)

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