

JAN 23 2020

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

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1 Finally, the legislature finds that positive advancement in
2 carbon sequestration challenges, wildlife management, wildfire
3 protection and forest health concerns can be best managed
4 through mutually beneficial practices with ranching, wildlife
5 protection, and native forest restoration.

6 SECTION 2. Section 171-36, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§171-36 Lease restrictions; generally.** (a) Except as
9 otherwise provided, the following restrictions shall apply to
10 all leases:

- 11 (1) Options for renewal of terms are prohibited;
- 12 (2) No lease shall be for a longer term than sixty-five
13 years, except in the case of a residential leasehold
14 which may provide for an initial term of fifty-five
15 years with the privilege of extension to meet the
16 requirements of the Federal Housing Administration,
17 Federal National Mortgage Association, Federal Land
18 Bank of Berkeley, Federal Intermediate Credit Bank of
19 Berkeley, Berkeley Bank for Cooperatives, or
20 Department of Veterans Affairs requirements; provided
21 that the aggregate of the initial term and extension
22

- 1 shall in no event exceed seventy-five years;
- 2 (3) No lease shall be made for any land under a lease that
3 has more than two years to run;
- 4 (4) No lease shall be made to any person who is in arrears
5 in the payment of taxes, rents, or other obligations
6 owed to the State or any county;
- 7 (5) No lease shall be transferable or assignable, except
8 by devise, bequest, or intestate succession; provided
9 that with the approval of the board, the assignment
10 and transfer of a lease or unit thereof may be made in
11 accordance with current industry standards, as
12 determined by the board; provided further that prior
13 to the approval of any assignment of lease, the board
14 shall have the right to review and approve the
15 consideration to be paid by the assignee and may
16 condition its consent to the assignment of the lease
17 on payment by the lessee of a premium based on the
18 amount by which the consideration for the assignment,
19 whether by cash, credit, or otherwise, exceeds the
20 depreciated cost of improvements and trade fixtures
21 being transferred to the assignee; provided further

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1 that with respect to state agricultural leases, in the
2 event of foreclosure or sale, the premium, if any,
3 shall be assessed only after the encumbrances of
4 record and any other advances made by the holder of a
5 security interest are paid;

6 (6) The lessee shall not sublet the whole or any part of
7 the demised premises except with the approval of the
8 board; provided that prior to the approval, the board
9 shall have the right to review and approve the rent to
10 be charged to the sublessee; provided further that in
11 the case where the lessee is required to pay rent
12 based on a percentage of its gross receipts, the
13 receipts of the sublessee shall be included as part of
14 the lessee's gross receipts; provided further that the
15 board shall have the right to review and, if
16 necessary, revise the rent of the demised premises
17 based upon the rental rate charged to the sublessee
18 including the percentage rent, if applicable, and
19 provided that the rent may not be revised downward;

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

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

3 (9) No lease of public lands, including submerged lands,
4 or any extension of any lease of public lands shall be
5 issued by the State to any person to construct, use,
6 or maintain a sunbathing or swimming pier or to use
7 the lands for those purposes, unless the lease, or any
8 extension thereof, contains provisions permitting the
9 general public to use the pier facilities on the
10 public lands and requiring that a sign or signs be
11 placed on the pier, clearly visible to the public,
12 that indicates the public's right to the use of the
13 pier. The board, at the earliest practicable date,
14 and where legally possible, shall cause all existing
15 leases to be amended to conform to this paragraph.
16 The term "lease", for the purposes of this paragraph,
17 includes month-to-month rental agreements and similar
18 tenancies.

19 (b) The board, from time to time, upon the issuance or
20 during the term of any intensive agricultural, aquaculture,
21 commercial, mariculture, special livestock, pasture, or
22 industrial lease, may:

1 (1) Modify or eliminate any of the restrictions specified
2 in subsection (a);

3 (2) Extend or modify the fixed rental period of the lease;
4 provided that the aggregate of the initial term and
5 any extension granted shall not exceed sixty-five
6 years; or

7 (3) Extend the term of the lease,
8 to the extent necessary to qualify the lease for mortgage
9 lending or guaranty purposes with any federal mortgage lending
10 agency, to qualify the lessee for any state or private lending
11 institution loan, private loan guaranteed by the State, or any
12 loan in which the State and any private lender participates, or
13 to amortize the cost of substantial improvements to the demised
14 premises that are paid for by the lessee without institutional
15 financing.

16 (c) Any extension authorized pursuant to subsection (b)
17 shall be based on the economic life of the improvements as
18 determined by the board or an independent appraiser; provided
19 that the approval of any extension shall be subject to the
20 following:

21 (1) The demised premises have been used substantially for
22 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 sixty-five years;
- 3 (3) In the event of a reopening, the rental for any
4 ensuing period shall be the fair market rental at the
5 time of reopening;
- 6 (4) Any federal or private lending institution shall be
7 qualified to do business in the State;
- 8 (5) Proceeds of any mortgage or loan shall be used solely
9 for the operations or improvements on the demised
10 premises;
- 11 (6) Where improvements are financed by the lessee, the
12 lessee shall submit receipts of expenditures within a
13 time period specified by the board or else the lease
14 extension shall be canceled; and
- 15 (7) The rules of the board setting forth any additional
16 terms and conditions, which shall ensure and promote
17 the purposes of the demised lands.
- 18 (d) The board, at any time during the term of any
19 intensive agricultural, aquaculture, or mariculture lease and
20 when justified by sound economic practices or other
21 circumstances, may permit an alternative agricultural,
22 aquaculture, or

1 mariculture use or uses for any portion or portions of the land
2 demised. As a condition to permitting alternative uses, the
3 board may require any other modifications, including rental
4 adjustments or changes in the lease, as may be necessary to
5 effect or accommodate the alternative use or uses. An
6 alternative use or uses may be allowed by the board upon:

- 7 (1) The application of the lessee;
- 8 (2) Consent of each holder of record having a security
9 interest in the leasehold; and
- 10 (3) A finding by the board that the alternative use or
11 uses are in the public interest.

12 (e) The board, from time to time during the term of any
13 agriculture, intensive agriculture, aquaculture, commercial,
14 mariculture, special livestock, pasture, or industrial lease,
15 may modify or eliminate any of the restrictions specified in
16 subsection (a), extend or modify the fixed rental period of the
17 lease, or extend the term of the lease upon a showing of
18 significant economic hardship directly caused by:

- 19 (1) State disaster, pursuant to chapter 209, including
20 seismic or tidal wave, tsunami, hurricane, volcanic
21 eruption, typhoon, earthquake, flood, or severe
22 drought; or

1 (2) A taking of a portion of the area of the lease by
2 government action by eminent domain, withdrawal, or
3 conservation easement; provided that the portion taken
4 shall not be less than ten per cent of the entire
5 leased area unless otherwise approved by the board;
6 and provided that the board determines that the lessee
7 will not be adequately compensated pursuant to the
8 lease provisions.

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

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

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

15 (3) The rental shall not be less than the rental for the
16 preceding term;

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

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

1 (g) Any provision of this chapter to the contrary
2 notwithstanding, the board may amend and extend pasture leases
3 to further public purposes that are the responsibility of the
4 department to promote, including, without limitation, preserving
5 existing native forest, reforestation for watershed enhancement
6 and forest carbon sequestration opportunities, facilitating
7 public hunting, establishing and maintaining public access to
8 landlocked reserves, enhancement of public recreational
9 opportunities, and protection and propagation of current
10 biological and other significant resources, subject to the
11 following:

- 12 (1) The demised premises have been used substantially for
13 the purpose for which they were originally leased;
14 (2) The aggregate of the initial term and any extension
15 granted shall not be for more than ninety-nine years;
16 (3) The public land has key characteristics that would
17 benefit from the amendment and extension of a pasture
18 lease, such as the capacity for public purposes to be
19 promoted through a lease amendment and extension; and
20 (4) The lessee under a pasture lease is agreeable to new
21 lease obligations regarding natural resource

1 conservation and stewardship that will achieve the
2 identified public purposes.

3 Notwithstanding section 171-17, the chairperson may set the
4 lease rent for the period of the lease term occurring after an
5 amendment under this subsection on such terms and conditions as
6 the chairperson may determine, including but not limited to a
7 value that incentivizes or otherwise promotes ranching
8 operations compatible with the public purposes that are the
9 responsibility of the department to promote, including without
10 limitation those specified above in this subsection. In
11 arriving at a rental value, the chairperson may also consider:
12 the specified use of the land; any restriction on grazing or
13 other beneficial uses of the land or portions thereof by lessee;
14 any conservation or stewardship services required to be
15 performed by the lessee under the amended lease; and any
16 withdrawal of lands from the lease premises. If an independent
17 appraisal is procured to determine rent for an amended pasture
18 lease, the chairperson may apply a lower rate of return if
19 warranted after consideration of the public purpose served by
20 the lease, use restrictions thereunder, and any obligation of
21 the lessee to provide conservation or stewardship services."

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

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

16 After a determination is made to negotiate the disposition
17 of a lease, the board shall:

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

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1 person interested in securing the lease shall file an
2 application with the board not later than forty-five
3 days after the first publication of the notice;

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

8 (3) Determine the applicants who meet the criteria for
9 selection set by the board or the department of
10 agriculture, as the case may be, and notify all
11 applicants of its determination. Any applicant may
12 examine the basis of the determination, which shall be
13 in writing, to ascertain whether or not the conditions
14 and criteria established by the board or the
15 department of agriculture were followed; provided that
16 if any applicant does not notify the board of the
17 applicant's objections, and the grounds therefor, in
18 writing, within twenty days of the receipt of the
19 notice, the applicant shall be barred from proceeding
20 to seek legal remedy for any alleged failure of the
21 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:

20 (A) Maritime and maritime-related operations, which
21 may provide for a maximum term of seventy years;
22 and

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

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

11 For the purposes of this subsection:

12 "Agricultural processing" means the processing of
13 agricultural products, including dairying, grown, raised, or
14 produced in Hawaii.

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

19 "Aquaculture" means the propagation, cultivation, or
20 farming of aquatic plants and animals in controlled or selected

1 environments for research, commercial, or stocking purposes,
2 including aquaponics or any growing of plants or animals with
3 aquaculture effluents.

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

8 (c) Any provision of this chapter to the contrary
9 notwithstanding, the board may issue pasture leases by direct
10 negotiation and without recourse to public auction for lands
11 already under pasture use when doing so will further public
12 purposes that are the responsibility of the department to
13 promote, including, without limitation, preserving existing
14 native forest, reforestation for watershed enhancement and
15 forest carbon sequestration opportunities, facilitating public
16 hunting, establishing and maintaining public access to
17 landlocked reserves, enhancement of public recreational
18 opportunities, and protection and propagation of current
19 biological and other significant resources, provided, however,
20 that the term of any pasture lease issued under this subsection
21 shall not be for more than sixty-five years.

1 Notwithstanding section 171-17, the chairperson may set the
2 rent for pasture leases issued under this subsection on such
3 terms and conditions as the chairperson may determine, including
4 but not limited to a value that incentivizes or otherwise
5 promotes ranching operations compatible with the public purposes
6 that are the responsibility of the department to promote,
7 including without limitation those specified above in this
8 subsection. In arriving at a rental value, the chairperson may
9 also consider: the specified use of the land; any restriction on
10 grazing or other beneficial uses of the land or portions thereof
11 and any conservation or stewardship services required to be
12 performed by the lessee under the lease. If an independent
13 appraisal is procured to determine rent for a pasture lease, the
14 chairperson may apply a lower rate of return if warranted after
15 consideration of the public purpose served by the lease, use
16 restrictions thereunder, and any obligation of the lessee to
17 provide conservation or stewardship services."

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

21 SECTION 5. New statutory material is underscored.

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

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INTRODUCED BY:



4

BY REQUEST

Report Title:

Public Lands; Leasing for Pasture Use

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 the Department of Land and Natural Resources is responsible for promoting.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

SB. NO. 2914

DEPARTMENT: Land and Natural Resources

TITLE: 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.

PURPOSE: To authorize 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 the Department is responsible for promoting.

MEANS: Amend sections 171-36 and 171-59, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Act 90, Session Laws of Hawaii 2003, codified into law as chapter 166E, HRS, provides for transfer of agricultural lands to the Department of Agriculture (DOA). The Department has transferred approximately 18,491 acres to the DOA over the years. However, pasture lands are not classified the same as agricultural lands under the Department's public lands statute and are a critical part of the Department's forest protection and hunting and recreation initiatives. The Department is retaining these lands and is willing to extend and amend the pasture leases to allow for greater resource protection and enhancement.

State pasture lessees and their trade organization, the Hawaii Cattlemen's Council, Inc., have campaigned to have the Department's pasture leases transferred to the DOA, which has greater flexibility under chapter 166E, Hawaii Revised Statutes, and chapter 4-158, Hawaii Administrative Rules, to amend, extend, and issue new leases by

negotiation. Some of these leases are approaching the end of their lease terms and the lessees believe that if the DOA assumed management of their leases, the lessees could secure extensions by direct negotiation and at rents less than fair market value under DOA's statute and rules.

This bill would provide incentives for the Department and ranchers to work together on mutually beneficial terms to promote public priorities by providing the Department with statutory powers similar to those exercised by the DOA in the management of its leases. The bill would authorize the Department to issue new pasture leases by direct negotiation with terms up to 65 years that include use restrictions on high resource value portions of the lease premises and allow the Department to factor use restrictions as well as the value of any land conservation and stewardship services lessees are required to perform under their leases into the determination of an appropriate rent to charge. The bill would also give the Department the authority to extend pasture leases up to an aggregate term of 99 years, and similar to the authority sought to issue new pasture leases, to amend leases to place use restrictions on high resource value portions of the lease premises and allow the Department to factor use restrictions and land conservation and stewardship services performed by lessees into determining an appropriate rent.

Impact on the public: The bill would allow the State to protect high value natural resource lands under lease for pasture purposes, including forest reserves and watersheds, and enhance public use of state lands for hunting and recreation.

Impact on the department and other agencies: This bill would support the Department's priorities while supporting DOA goals by

providing the Department with statutory powers similar to those exercised by the DOA in the management of its leases. The bill would give the Department the authority to extend pasture leases up to an aggregate term of 99 years, and to amend the leases to place grazing or other use restrictions on high resource value portions of the lease premises. The bill would also allow the Department to factor use restrictions as well as the value of any land conservation and stewardship services lessees are required to perform under their leases in determining an appropriate rent to charge. If this bill does not pass, the Department will face increasing demands from pasture lessees, their trade organization and the DOA to transfer pasture leases to the DOA, thereby relinquishing control over high resource value lands to the detriment of the natural resources of the State and the general public.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: Department of Agriculture, Office of
Hawaiian Affairs.

EFFECTIVE DATE: Upon approval.