

JAN 27 2021

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

12           Furthermore, the perceived need to transfer pasture leases  
13 to the department of agriculture can be relieved by providing  
14 the department of land and natural resources with statutory  
15 powers similar to those exercised by the department of  
16 agriculture in the management of its leases.

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1           Finally, positive advancement in carbon sequestration  
2 challenges, wildlife management, wildfire protection and forest  
3 health concerns can be best managed through mutually beneficial  
4 practices with ranching, wildlife protection, and native forest  
5 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 shall in no event exceed seventy-five years;

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

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1 shall be assessed only after the encumbrances of  
2 record and any other advances made by the holder of a  
3 security interest are paid;

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

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

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

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

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

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

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

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

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

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

21           (2) The aggregate of the initial term and any extension  
22           granted shall not be for more than sixty-five years;

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

1 adjustments or changes in the lease as may be necessary to  
2 effect or accommodate the alternative use or uses. An  
3 alternative use or uses may be allowed by the board upon:

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

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

- 16 (1) State disaster, pursuant to chapter 209, including  
17 seismic or tidal wave, tsunami, hurricane, volcanic  
18 eruption, typhoon, earthquake, flood, or severe  
19 drought; or
- 20 (2) A taking of a portion of the area of the lease by  
21 government action by eminent domain, withdrawal, or  
22 conservation easement; provided that the portion taken



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1 shall not be less than ten per cent of the entire  
2 leased area unless otherwise approved by the board;  
3 and provided that the board determines that the lessee  
4 will not be adequately compensated pursuant to the  
5 lease provisions.

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

8 (1) The demised premises has been used substantially for  
9 the purposes for which they were originally leased;

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

12 (3) The rental shall not be less than the rental for the  
13 preceding term;

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

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

20 (g) Any provision of this chapter to the contrary  
21 notwithstanding, the board may amend and extend pasture leases  
22 in furtherance of public purposes that are the responsibility of

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1 the department to promote, including, without limitation,  
2 preserving existing native forest, reforestation for watershed  
3 enhancement and forest carbon sequestration opportunities,  
4 facilitating public hunting, establishing and maintaining public  
5 access to landlocked reserves, enhancement of public  
6 recreational opportunities, and protection and propagation of  
7 current biological and other significant resources, subject to  
8 the following:

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

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

14       (3) The board may consider key characteristics of public  
15       lands most likely to benefit from the amendment and  
16       extension of pasture leases, identification of public  
17       purposes to be promoted through lease amendment and  
18       extension, a description of the types of lessee  
19       obligations regarding natural resource conservation  
20       and stewardship that will serve to achieve the  
21       identified public purposes, a statement of the types  
22       of lease amendments that are desirable to promote

1           these public purposes, eligibility requirements for  
2           pasture lessees, and applicant qualifications.

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

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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.

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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

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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  
21 environments for research, commercial, or stocking purposes,

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1 including aquaponics or any growing of plants or animals with  
2 aquaculture effluents.

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

7 (c) Any provision of this chapter to the contrary  
8 notwithstanding, the board may issue pasture leases by  
9 negotiation for lands already under pasture use when doing so  
10 will further public purposes that are the responsibility of the  
11 department to promote, including, without limitation, preserving  
12 existing native forest, reforestation for watershed enhancement  
13 and forest carbon sequestration opportunities, facilitating  
14 public hunting, establishing and maintaining public access to  
15 landlocked reserves, enhancement of public recreational  
16 opportunities, and protection and propagation of current  
17 biological and other significant resources, subject to the  
18 following:

19 (1) The term of any pasture lease issued under this  
20 subsection shall not be for more than sixty-five  
21 years; and



1       (2) The board may consider key characteristics of public  
2       lands most likely to benefit from the negotiation of  
3       pasture leases, identification of public purposes to  
4       be promoted through negotiation of pasture leases, a  
5       description of the types of lessee obligations  
6       regarding natural resource conservation and  
7       stewardship that will serve to achieve the identified  
8       public purposes, eligibility requirements for pasture  
9       lessees, and applicant qualifications.

10       The chairperson may set the rent for pasture leases issued  
11       under this subsection on such terms and conditions as the  
12       chairperson may determine, including but not limited to a value  
13       that incentivizes or otherwise promotes ranching operations  
14       compatible with the public purposes that are the responsibility  
15       of the department to promote, including without limitation those  
16       specified above in this subsection. In arriving at a rental  
17       value, the chairperson may also consider: the specified use of  
18       the land; any restriction on grazing or other beneficial uses of  
19       the land or portions thereof by lessee; and any conservation or  
20       stewardship services required to be performed by the lessee  
21       under the lease. If an independent appraisal is procured to  
22       determine rent for a pasture lease, the chairperson may apply a

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1 lower rate of return if warranted after consideration of the  
2 public purpose served by the lease, use restrictions thereunder,  
3 and any obligation of the lessee to provide conservation or  
4 stewardship services."

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

8 SECTION 5. New statutory material is underscored.

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

10

11

INTRODUCED BY: 

12

BY REQUEST

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**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.*

# SB. NO. 1168

## JUSTIFICATION SHEET

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 Department of Agriculture (DOA). The Department has transferred approximately 18,491 acres to 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 DOA, which has greater flexibility under chapter 166E, HRS, 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 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 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 65 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.

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 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 65 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 DOA to transfer pasture leases to DOA, thereby relinquishing control over high resource value lands to the detriment 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.