
A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. The legislature finds that public land leases
2 are statutorily limited to sixty-five years without the
3 possibility of renewing the terms of the lease, which leaves
4 businesses that have existed in the community for decades with
5 limited options. Additionally, in Act 142, Session Laws of
6 Hawaii 2015, the legislature expressed concern that one of the
7 consequences of the State's public land lease law is that
8 existing lessees may have little incentive to make, or the
9 ability to finance, major repairs or improvements to their
10 leasehold properties during the last five to fifteen years of
11 the lease, which sometimes results in the deterioration of
12 infrastructure and facilities.

13 The legislature therefore concludes that creating a
14 mechanism to assist these lessees and encourage economic
15 development in leasehold properties is in the public interest.
16 Allowing lessees to relinquish their lease in the final decade
17 of the lease term will incentivize lessees to maintain the land



1 and buildings at a high standard. Furthermore, allowing the
2 relinquishing lessee to bid on a new lease encourages long-term
3 business growth and development, which benefits communities.
4 Finally, requiring lands to be disposed of at public auction
5 ensures that the State meets its fiduciary duty to manage state
6 lands in the best interests of the public.

7 The purpose of this Act is to best serve the public use and
8 public purpose of state lands that are being used for commercial
9 purposes by allowing the lessees of state lands who are within
10 the last ten years of their land lease to voluntarily request
11 that the lease be put up to bid at a public auction and by
12 allowing the lessee to bid on a new lease.

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

16 "§171- Leases; relinquishment. (a) Notwithstanding any
17 provision of law to the contrary, a lessee of public land that
18 is subject to the management, administration, or control of the
19 department may relinquish a lease during the last ten years of
20 the term of the lease, as provided in this section.

21 (b) Prior to relinquishing the lease, the lessee shall:



1 (1) Provide the board with no less than ninety days'
2 written notice of the intent to relinquish the lease;

3 (2) Contract with a real estate appraiser licensed or
4 certified pursuant to chapter 466K to determine the
5 current depreciated or residual value of any
6 improvements to the land; and

7 (3) Contract with a real estate appraiser licensed or
8 certified pursuant to chapter 466K to determine the
9 fair market value of the land.

10 If the board fails to agree to the appraised value determined
11 pursuant to paragraph (2) or (3), the department may contract
12 with an appraiser licensed or certified pursuant to chapter 466K
13 and agreed to by the lessee, and the value or values not agreed
14 to by the board shall be determined by arbitration as provided
15 in chapter 658A. If the lessee disagrees with the department's
16 selection of the appraiser, the board shall select the
17 appraiser. The cost of contracting with the appraiser shall be
18 borne entirely by the lessee.

19 (c) Unless specifically required to do so by the board, a
20 relinquishing lessee shall not be required to remove
21 improvements or restore the land to a vacant condition; provided



1 that, without prejudice to any other rights or remedies that
2 either party may have, this subsection shall not alter any
3 obligation of a relinquishing lessee to indemnify, defend, and
4 hold the State harmless from any claims regarding pollution or
5 contamination of the land with potentially hazardous substances.

6 (d) Upon relinquishment of the lease, the board shall
7 dispose of the land by public auction as provided in section
8 171-14; provided that the auction upset price shall be the
9 greater of the current ground rent or the appraised fair market
10 rent, as if the land were vacant and unimproved. The
11 relinquishing lessee may bid on the new lease at the public
12 auction; provided that, if the relinquishing lessee does not bid
13 or is not awarded the lease after the public auction, the
14 relinquishing lessee shall vacate the land within one hundred
15 twenty days, unless the department agrees to allow a longer term
16 to vacate.

17 (e) Lease terms for the new lease shall be determined by
18 the board; provided that if the lease is awarded after public
19 auction to any party other than the relinquishing lessee, the
20 lease rent shall include a premium equal to the residual value
21 of any improvements to the land, as determined pursuant to



1 subsection (b), which shall be paid to the relinquishing lessee
2 prior to transfer of the land and improvements to the new
3 lessee.

4 (f) The lease rent established in any new lease issued
5 pursuant to this section shall not be less than the greater of
6 the current ground rent or the appraised fair market rent of the
7 lease being relinquished pursuant to this section.

8 (g) This section shall not apply to:

9 (1) Any lessee who is in arrears in the payment of taxes,
10 rents, or other obligations owing to the State or any
11 county or who has had, during the five years preceding
12 the anticipated disposition of the public land at a
13 public auction, a sale, lease, license, permit, or
14 easement covering other public lands canceled for
15 failure to satisfy the terms and conditions thereof;
16 or

17 (2) Any lease that is subject to cancellation for failure
18 to satisfy the terms or conditions of a lease,
19 license, permit, or easement covering the public
20 lands.



1 (h) As used in this section, "improvements" means all
2 physical improvements constructed, owned, or constructed and
3 owned by the lessee during the lease term and shall exclude all
4 infrastructure constructed, owned, or constructed and owned by
5 third parties, such as water and sewer pipes, electricity and
6 telephone lines and cables, or other infrastructure."

7 SECTION 3. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$ or so
9 much thereof as may be necessary for fiscal year 2017-2018 and
10 the same sum or so much thereof as may be necessary for fiscal
11 year 2018-2019 for costs incurred in the implementation of this
12 Act.

13 The sums appropriated shall be expended by the department
14 of land and natural resources for the purposes of this Act.

15 SECTION 4. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 5. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 6. New statutory material is underscored.

4 SECTION 7. This Act shall take effect on March 15, 2099.

5



Report Title:

Public Lands; Leases; Relinquishment; Appropriation

Description:

Allows lessees of certain public land to relinquish a lease during the last ten years of the term of the lease, subject to certain conditions, and allows the lessee to bid on the new lease at public auction. Appropriates funds to DLNR. Effective 3/15/2099. (SD1)

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