

JAN 29 2015

A BILL FOR AN ACT

RELATING TO THE DISPOSITION OF PUBLIC LANDS.

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

1 SECTION 1. The legislature finds that creating mechanisms
2 and incentives to help lessees of public lands obtain financing
3 to construct improvements upon those lands will support small
4 businesses and concomitantly facilitate the maximization of
5 revenue from public land leases. For example, a lessee securing
6 a new lease with the intent to make substantial capital
7 improvements to the land or replace existing improvements needs
8 assurance that the time period of the new lease conforms, at a
9 minimum, to any applicable financing agreement obtained by the
10 lessee to finance the new lease or improvements. The
11 legislature is committed to ensuring fair and equitable access
12 in the leasing of public lands through public auction and to
13 protecting the State from the expense of future remediation
14 requirements or legal claims that may result from the actions of
15 lessees.

16 The purpose of this Act is to:



- 1 (1) Enable lessees of public lands to obtain financing to
- 2 construct improvements upon those lands;
- 3 (2) Enable lessees of public lands to relinquish leases
- 4 during the second half of a lease; and
- 5 (3) Ensure fair and equitable valuations and disposition
- 6 of capital improvements in conjunction with the
- 7 establishment of lease rents and public auctioning of
- 8 relinquished leases.

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- Right to relinquish a lease; appraisals;
13 improvements. (a) Notwithstanding any other provision of law
14 to the contrary, a lessee of public land that is subject to the
15 management, administration, or control of the department may
16 relinquish the lease during the last half of the term of the
17 lease, as provided in this section.

18 (b) Prior to relinquishing the lease, the lessee shall:
19 (1) Provide the board with not less than ninety days
20 written notice of the intent to relinquish the lease;
21 and



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

5 If the board fails to agree to the appraised residual value of
6 the improvements, the department may contract with an appraiser
7 licensed or certified pursuant to chapter 466K and agreed to by
8 the lessee, and the value shall be determined by arbitration as
9 provided in chapter 658A. In the event that the lessee
10 disagrees with the department's selection of the appraiser, the
11 board shall select the appraiser. The cost of contracting with
12 the appraiser shall be borne equally by the lessee and the
13 board.

14 (c) Unless specifically required to do so by the board, a
15 relinquishing lessee shall not be required to remove
16 improvements or restore the land to a vacant condition; provided
17 that, without prejudice to any other rights or remedies that
18 either party may have, this subsection shall not indemnify a
19 relinquishing lessee from any claims regarding pollution or
20 contamination of the land with potentially hazardous substances.



1 (d) Upon relinquishment of the lease, the board shall
2 dispose of the land by public auction as provided in section
3 171-14; provided that the auction upset shall be the greater of
4 the current ground rent or the appraised fair market rent, as if
5 the land were vacant and unimproved. The relinquishing lessee
6 may bid on the new lease at the public auction; provided that if
7 the relinquishing lessee does not bid or is not awarded the
8 lease after the public auction, the relinquishing lessee shall
9 vacate the land within one hundred twenty days, unless the
10 department agrees to allow a longer term.

11 (e) Lease terms for the new lease shall be determined by
12 the board; provided that if the lease is awarded after public
13 auction to any party other than the relinquishing lessee, the
14 lease rent shall include a premium equal to the residual value
15 of any improvements to the land, as determined pursuant to
16 subsection (b), which shall be paid to the relinquishing lessee
17 prior to transfer of the land and improvements to the new
18 lessee.

19 (f) In the event that the relinquishing lessee is the sole
20 bidder on a new lease, the lease rent established in any new
21 lease issued pursuant to this section shall be not less than the



1 lease rent established in the lease being relinquished pursuant
2 to this section.

3 (g) This section shall not apply to:

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

12 (2) Any lease that is subject to cancellation for failure
13 to satisfy the terms or conditions of a lease,
14 license, permit, or easement covering the public
15 lands.

16 (h) As used in this section, "improvements" means all
17 physical improvements to the land that are for the benefit of
18 the lessee, including but not limited to:

19 (1) Buildings, structures, driveways, roads, or fences
20 erected on or affixed to the land; and



1 (2) Water and sewer pipes, electricity and telephone lines
2 and cables, or other infrastructure necessary to the
3 utility of the land."

4 SECTION 3. 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 4. If any provision of this Act, or the
8 application thereof to any person or circumstance, is held
9 invalid, the invalidity does not affect other provisions or
10 applications of the Act that can be given effect without the
11 invalid provision or application, and to this end the provisions
12 of this Act are severable.

13 SECTION 5. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on January 1, 2016.

15

INTRODUCED BY: *Glen Kolbe*
by request



S.B. NO. 1247

Report Title:

Public Lands; Relinquishment of Lease; Capital Improvements

Description:

Grants lessees of public land the right to relinquish a lease. Provides for the valuation of improvements to the land. Provides that a relinquishing lessee shall not automatically be required to remove improvements. Provides for disposition of the land at public auction after relinquishment. Defines "improvements" to include infrastructure.

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