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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. Title 2 of the Hawaiian Homes Commission Act,  
3 1920, is amended by adding a new section to be appropriately  
4 designated and to read as follows:

5 "§ \_\_\_\_\_ **Commercial projects.** The department of Hawaiian  
6 home lands may negotiate lease terms, including initial lease  
7 terms and any extensions, beyond sixty-five years for commercial  
8 projects that have or shall be developed pursuant to a land  
9 disposition authorized under section 204(a)(2), or a project  
10 developer agreement authorized under section 220.5 in  
11 consultation with the beneficiaries of the trust. Upon  
12 expiration of a lease, the lease may be offered for public  
13 auction as provided in this title; provided that the previous  
14 lease holder shall be offered the right of first refusal in  
15 accordance with the terms of the lease; and provided further  
16 that the lease holder shall agree to match at least the highest  
17 bid offered at the public auction.



1 price of [~~such~~] the easement shall be determined  
2 pursuant to section 171-17(b).

3 No person shall be eligible to purchase or lease public lands,  
4 or to be granted a license, permit, or easement covering public  
5 lands, who has had during the five years preceding the date of  
6 disposition a previous sale, lease, license, permit, or easement  
7 covering public lands cancelled for failure to satisfy the terms  
8 and conditions thereof."

9 SECTION 3. Section 171-18, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§171-18 Public land trust.** (a) All funds derived from  
12 the sale or lease or other disposition of public lands shall be  
13 appropriated by the laws of the State; provided that all  
14 proceeds and income from the sale, lease, or other disposition  
15 of lands ceded to the United States by the Republic of Hawaii  
16 under the joint resolution of annexation, approved July 7, 1898  
17 (30 Stat. 750), or acquired in exchange for lands so ceded, and  
18 returned to the State of Hawaii by virtue of section 5(b) of the  
19 Act of March 18, 1959 [~~(73 Stat. 6)~~], (73 Stat. 5) and all  
20 proceeds and income from the sale, lease, or other disposition  
21 of lands retained by the United States under sections 5(c) and  
22 5(d) of the Act and later conveyed to the State under section

1 5(e) shall be held as a public trust for the support of the  
2 public schools and other public educational institutions, for  
3 the betterment of the conditions of native Hawaiians as defined  
4 in the Hawaiian Homes Commission Act, 1920, as amended, for the  
5 development of farm and home ownership on as widespread a basis  
6 as possible, for the making of public improvements, and for the  
7 provision of lands for public use.

8 (b) Notwithstanding any law to the contrary, all funds,  
9 proceeds, and income from the disposition of public trust lands  
10 as described in subsection (a), whether by sale, lease, or other  
11 disposition, shall be deposited into the public trust as set  
12 forth in subsection (a). The funds, proceeds, and income shall  
13 be held and used solely for the acquisition of lands, to be set  
14 aside for the purposes set forth in subsection (a), with respect  
15 to lands ceded to the United States under the joint resolution  
16 of annexation or acquired in exchange for lands so ceded and  
17 returned to the State, and lands retained under section 5(c) and  
18 5(d) of the Act of March 18, 1959 (73 Stat. 5), in order that  
19 the public land trust be maintained and not diminished.

20 (c) Except as provided in subsection (d), the State shall  
21 not dispose of any public trust lands in fee simple, including  
22 any disposition by lease with option to purchase; provided that

1 the State may dispose of public trust lands upon one of the  
2 following occurrences:

3 (1) The claims of the native Hawaiian people, as defined  
4 in the United States Apology Resolution, Pub. L. No.  
5 103-150 (1993), have been resolved; or

6 (2) The legislature finds pursuant to a concurrent  
7 resolution adopted by at least two-thirds majority  
8 vote of the members to which each house is entitled  
9 that the State no longer supports reconciliation  
10 between the State and the native Hawaiian people.

11 (d) The limitations on the sale and transfer of lands  
12 pursuant to subsection (c) shall not prevent the State from:

13 (1) Disposing of remnants, as defined in section 171-52;

14 (2) Providing easements to public utilities and government  
15 agencies pursuant to section 171-95;

16 (3) Engaging in land exchanges pursuant to sections 171-50  
17 and 171-51;

18 (4) Disposing of public trust lands that are part of  
19 negotiations between the office of Hawaiian affairs  
20 and the State with respect to issues relating to the  
21 income and proceeds from the lands in the public  
22 trust;

1       (5) Disposing of public trust lands after December 31,  
 2       2014; provided that the disposition is approved by the  
 3       legislature by concurrent resolution adopted by at  
 4       least two-third majority vote of the members to which  
 5       each house is entitled; and

6       (6) Disposing of public trust lands, provided that all of  
 7       the following conditions are met:

8       (A) The State establishes a compelling state interest  
 9       for the disposition;

10      (B) There is no reasonable alternate means to  
 11      accomplish the compelling state interest;

12      (C) The disposition is limited to accomplishing the  
 13      compelling state interest; and

14      (D) The disposition is approved by the legislature by  
 15      concurrent resolution adopted by at least two-  
 16      thirds majority vote of the members to which each  
 17      house is entitled."

**PART III**

19      SECTION 4. The provisions of the amendments made by this  
 20 Act to the Hawaiian Homes Commission Act, 1920, as amended, are  
 21 declared to be severable, and if any section, sentence, clause,  
 22 or phrase, or the application thereof to any person or

1 circumstances is held ineffective because there is a requirement  
2 of having the consent of the United States to take effect, then  
3 that portion only shall take effect upon the granting of consent  
4 by the United States and effectiveness of the remainder of these  
5 amendments or the application thereof shall not be affected.

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

9 SECTION 6. If any provision of this Act, or the  
10 application thereof to any person or circumstance is held  
11 invalid, the invalidity does not affect other provisions or  
12 applications of the Act, which can be given effect without the  
13 invalid provision or application, and to this end the provisions  
14 of this Act are severable.

15 SECTION 7. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect on July 1, 2009.

**Report Title:**

DHHL; Commercial Projects; Ceded Lands; Public Land Trust;  
Management

**Description:**

Permits the DHHL to negotiate lease terms beyond sixty-five years, and provides a right of first refusal to previous lessees. Prohibits the sale or transfer of ceded lands until the unrelinquished claims of the native Hawaiian people are resolved or reconciliation between the State and the native Hawaiian people is no longer supported, whichever occurs first; except in the following circumstances: disposing of remnants, providing easements to public utilities and government agencies as provided by law, land exchanges as provided by law, dispositions that are a part of the ceded lands negotiations between OHA and the State, dispositions after December 31, 2014, that are approved by a 2/3 vote of both houses of the legislature, or when a compelling state interest for the disposition is established. (SD1)