

JAN 27 2010

S.B. NO. 2838

A BILL FOR AN ACT

RELATING TO THE DISPOSITION OF PUBLIC LANDS.

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

1 PART I

2 SECTION 1. Hawaii, as well as the rest of the nation, is
3 in the midst of one of the most challenging economic times it
4 has ever faced. Some of the leading economic indicators have
5 forecast numbers not seen since the Great Depression of the
6 1930s. The situation now facing Hawaii, the United States, and
7 the world is due, in large part, to the effects of the global
8 credit and financial crisis that have caused the national
9 economy to shrink. The domino effect caused by this situation
10 has resulted in greater unemployment, increased home
11 foreclosures, massive layoffs, and a decrease in the purchasing
12 power of the individual American, who now has less disposable
13 income.

14 The global recession has drastically reduced government
15 revenues across the United States. Many states, including
16 Hawaii, have increased taxes and reduced funding for government
17 programs and services to balance their budgets. A number of
18 states have also implemented, or intend to implement, layoffs



1 and furloughs of government employees, and some states are even
2 considering government-wide shutdowns to help ease the economic
3 strain. In Hawaii, the depth and breadth of the "Great
4 Recession" continue to erode the fragile status of a state
5 budget already experiencing a major deficit.

6 Numerous economic factors, including downturns in Hawaii's
7 two major industries, tourism and construction, have had a
8 tremendous impact on the state budget and greatly contributed to
9 the large deficit the State now faces. Although the state
10 economy had been performing very well over recent years, with
11 the lowest unemployment in the nation and many years of budget
12 surpluses, the recent meltdown of the global economy that began
13 in the latter portion of 2008 has severely reduced revenue
14 projections and collections. Hawaii's residents have lost jobs,
15 investments, and homes; there has been a decrease in the number
16 of visitor arrivals; and consumer spending has declined. As a
17 result, the 2009 legislature faced a historic revenue shortfall.
18 The latest forecast adds \$40 million to the state budget
19 deficit, which the Council on Revenues now projects will be \$1.1
20 billion through June 2011.

21 The legislature recognizes that difficult choices must
22 continue to be made to address this budget shortfall. If



1 circumstances remain unchanged, the current budget shortfall of
2 over \$1.1 billion will require a minimum of reductions in
3 spending of at least \$550 million per year over the next two
4 years. While some solutions to solve the current fiscal crisis
5 have been or are currently being implemented, additional revenue
6 sources are still sorely needed.

7 Without additional revenue sources, the daily operations of
8 the State, including essential services to residents and
9 visitors alike, are in jeopardy. The legislature finds that
10 Hawaii urgently needs to address this shortfall as soon as
11 reasonably possible.

12 The State holds title to many parcels of land that are not
13 essential to the provision of public health, safety, and welfare
14 services by the State or county. These lands may be sold to
15 close or reduce the looming deficit. Some examples of the
16 parcels are:

17 Kauai

18 (1) 1593 Papau Street, Kapaa (TMK No. 4-4-6-38-74); and

19 (2) 1951 Pahoehoe Street, Koloa (TMK No. 4-2-8-24-14).

20 Maui

21 (1) 1051 Onaha Street, Wailuku (TMK No. 2-3-3-16-11); and

22 (2) 1098 Onaha Street, Wailuku (TMK No. 2-3-3-16-124).



1 Hawaii

- 2 (1) Mauna Kea Scientific Reserve (TMK: 3-4-4-015: 9 and
3 12); and
4 (2) Mauna Kea Ice Age Natural Area Reserve, a 143.5 acre
5 square parcel around Puu Pohaku, located to the west
6 of the summit area and a 3,750 acre triangular-shaped
7 parcel that extends from approximately 10,070 feet
8 (3,069 meters) up to 13,230 feet (4,033 meters) at the
9 upper tip of the parcel.

10 Oahu

- 11 (1) 91-1139 Kamaaha Loop, Kapolei (TMK No. 1-9-1-16-41-
12 0019);
13 (2) 91-1072 Welowelo Street, Kapolei (TMK No. 1-9-1-81-
14 61);
15 (3) 95-021 Kuaahelani Avenue, Mililani (TMK No. 1-9-4-5-
16 34-0136);
17 (4) 95-029 Kuaahelani Avenue, Mililani (TMK No. 1-9-4-5-
18 34-0097);
19 (5) 95-033 Kuaahelani Avenue, Mililani (TMK No. 1-9-4-5-
20 34-0033);
21 (6) 94-940 Meheula Parkway, Mililani (TMK No. 1-9-4-5-
22 34-0048);



- 1 (7) 2949 Ala Ilima Street #201, Honolulu (TMK No. 1-1-1-
2 61-2-0001);
- 3 (8) Northwest Corner Parcel, Kapolei (TMK No. 1-9-1-
4 15:35);
- 5 (9) Vacant Parcel, Village 8, Kapolei (TMK No. 1-9-1-
6 016:88 (portion));
- 7 (10) Village 4, Kekuilani, Kapolei (TMK Nos. 1-9-1-79:01
8 to 35);
- 9 (11) Hokulele Vacant Parcel #1, Kaneohe (TMK No. 1-4-5-23-
10 11);
- 11 (12) Hokulele Vacant Parcel #2, Kaneohe (TMK No. 1-4-5-23-
12 12);
- 13 (13) That certain 55 acre parcel of state land adjacent to
14 the site of the University of Hawaii's proposed
15 Kapolei campus, located on the North-South road near
16 Farrington highway, Oahu, that was acquired by the
17 State by a land exchange authorized by Act 294,
18 Session Laws of Hawaii 1996;
- 19 (14) Kakaako Makai, Lots 2, 3, 4, 5, and 9 as identified on
20 the final Kakaako park subdivision map dated October
21 15, 2007, and approved by the city and county of
22 Honolulu department of planning and permitting on



1 November 9, 2007; except TMK Nos. 2-1-058:41 and 2-1-
2 058:110;

3 (15) La Mariana and Pier 60 (TMK Nos. (1) 1-2-23:52, (1)
4 1-2-23:67, (1) 1-2-23:30, and (1) 1-2-23:55);

5 (16) Accreted peninsula and land filled bordered by Kalihi
6 stream and Moanalua stream (TMK No. (1) 1-1-3:3);

7 (17) Waikiki Yacht Club (TMK No. (1)-23037006);

8 (18) Ala Wai Boat Harbor Complex (TMK Nos. (1)-23037012,
9 (1)-26010005, (1)-26010016, (1)-26010003, (1)-
10 23037013, (1)-23037020, (1)-23037024, (1)-23037033,
11 and (1)-23037035);

12 (19) AAFES Property (TMK No. (1)-21058006); and

13 (20) Kalaeloa Makai (TMK No. (1)-9-1-31:1).

14 The purpose of this part is to address the exigent and
15 extraordinary circumstances that have caused a gaping shortfall
16 in state revenues by directing the department of land and
17 natural resources to, as soon as reasonably possible, sell a
18 certain amount of public lands to raise the amount of revenues
19 in the general fund.

20 SECTION 2. **Sale of public lands.** (a) Notwithstanding any
21 provision of chapter 171, Hawaii Revised Statutes, or any other
22 law to the contrary, the board of land and natural resources



1 shall immediately sell public lands in an amount sufficient to
2 provide at least \$500,000,000, and not more than \$750,000,000 in
3 net proceeds prior to June 30, 2011. The sale of such public
4 lands shall be at public auction or by negotiation of the fee
5 simple interest in public lands, as defined in section 171-2,
6 Hawaii Revised Statutes, together with any existing improvements
7 thereon; provided that the sale of the public land:

- 8 (1) Shall not involve public lands that are essential to
9 the provision of public health, safety, and welfare
10 services by the State or county;
- 11 (2) Shall not violate any federal law, agreement, or
12 restriction, or jeopardize federal funding of any
13 state or county program;
- 14 (3) Shall be sold subject to section 171-58, Hawaii
15 Revised Statutes, relating to the reservation to the
16 State of mineral or surface or ground water rights;
17 and
- 18 (4) Shall close and consummate in a manner that will
19 provide at least \$500,000,000 and not more than
20 \$750,000,000 in sale proceeds by June 30, 2011.

21 (b) Pursuant to Section 5 of the Admission Act, Article
22 XII, Section 4 of the Hawaii Constitution, and chapter 10,



1 Hawaii Revised Statutes, twenty per cent of all net proceeds
2 under this part, from the sale of lands in the public land
3 trust, as defined by section 10-3(1), Hawaii Revised Statutes,
4 shall be paid to the office of Hawaiian affairs. Pursuant to
5 Section 5(f) of the Admission Act, the remainder of the net
6 proceeds from the sale of such lands shall be deposited into the
7 general fund to be managed and expended for one or more of the
8 following purposes:

9 (1) For the support of the public schools and other
10 nonsectarian or nondenominational public educational
11 institutions;

12 (2) For the development of farm and home ownership on as
13 widespread a basis as possible;

14 (3) For the making of public improvements; and

15 (4) For the provision of lands for public use.

16 (c) All net proceeds from the sale of public lands that
17 are not described in subsection (b) shall be deposited into the
18 general fund.

19 SECTION 3. **Conduct of sale.** Notwithstanding the
20 provisions of chapter 171, Hawaii Revised Statutes, or any other
21 law to the contrary, the sale of fee simple interest in public



1 land by the board of land and natural resources under this part,
2 shall be at public auction or by negotiation, as follows:

3 (1) **Appraisal.** The board shall conduct an appraisal of
4 the public land for sale to determine the upset price.

5 The appraisal of the public land for sale at public auction
6 shall be performed by an employee of the board of land and
7 natural resources qualified to appraise lands, or by one but not
8 more than three disinterested appraisers whose services shall be
9 contracted for by the board; provided that the upset price shall
10 be determined by disinterested appraisal whenever prudent
11 management so dictates. No such lands shall be sold for a sum
12 less than the value fixed by appraisal; provided that for any
13 sale at public auction, the board may establish the upset sale
14 price at less than the appraisal value set by an employee of the
15 board and the land may be sold at that price. The board shall
16 be reimbursed by the purchaser for the cost of any appraisal
17 required to be made by a disinterested appraiser or appraisers
18 contracted for by the board.

19 The sale price of the public lands to be disposed of by
20 negotiation shall be no less than the value determined by:

21 (A) An employee of the board qualified to appraise lands;

22 or



1 (B) A disinterested appraiser or appraisers whose services
2 shall be contracted for by the board, and such
3 appraisal, and any further appraisal with the approval
4 of the board, shall be at the cost of the purchaser;
5 provided that the sale price shall be determined by
6 disinterested appraisal whenever prudent management so dictates.

7 All appraisal reports shall be available for study by the
8 public.

9 (2) **Notice.** Public notice of any proposed disposition by
10 auction shall be given at least once statewide and once in the
11 county where the land being disposed of is located. Notice of
12 the auction shall contain the following:

13 (A) Time and place of the auction;

14 (B) General description of the land, including the address
15 and tax map key;

16 (C) Specific use for which the disposition is intended;
17 and

18 (D) Upset price to be charged. The maps showing the metes
19 and bounds description and the classification of the
20 land shall be kept in the office of the board of land
21 and natural resources and of its land agent in the



1 county in which the land is situated, and shall be
2 open for inspection at all reasonable hours.

3 Public notice of a proposed disposition by negotiation
4 shall be given at least once statewide and once in the county
5 where the land being disposed of is located. The notice shall
6 invite proposals and state in general terms the size, location,
7 and prices of lots to be sold, the terms of sale, and the last
8 date on which application will be received by the board, which
9 date shall not be less than thirty days after the last date of
10 the notice. The notice shall also state the times and places at
11 which more detailed information with respect to the sale may be
12 secured by interested persons.

13 Any public notice required under this section shall also be
14 posted on the Internet in an easily-located manner.

15 **SECTION 4. Exemption from legislative approval.** The sale
16 of any public lands by the board of land and natural resources
17 under this part shall not be subject to the provisions of
18 section 171-64.7, Hawaii Revised Statutes.

19 **SECTION 5. Report to the legislature.** The board of land
20 and natural resources shall submit a report on the status and
21 progress of the sale of the public lands to the legislature no



1 later than twenty days prior to the commencement of the regular
2 session of 2011.

3 PART II

4 SECTION 6. Notwithstanding any other law to the contrary,
5 the board of land and natural resources shall enter into direct
6 negotiation without regard to public auction to dispose of
7 public lands to any not-for-profit organization that has
8 seventy-five or less subtenants on those public lands who:

- 9 (1) Manage and maintain one hundred twelve lots or less;
- 10 (2) Have less than eight years remaining on any fixed rent
11 portion of their existing lease; and
- 12 (3) Have invested collectively more than \$40,000,000 in
13 infrastructure and \$20,000,000 in improvements to the
14 property.

15 SECTION 7. If any provision of this Act, or the
16 application thereof to any person or circumstance is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act, which can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.

21



1 SECTION 8. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Robert A. ...



Report Title:

Public Lands; Disposition

Description:

Directs the Department of Land and Natural Resources to fund the general fund by disposing of public lands. Also directs the Department to dispose of public lands leased to not-for-profit organizations meeting certain criteria.

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

