
A BILL FOR AN ACT

RELATING TO BANYAN DRIVE.

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

1 SECTION 1. **Purpose.** The purpose of this Act is to require
2 the department of land and natural resources to enter into
3 negotiations with the county of Hawaii for the lease of certain
4 properties located near or adjacent to Banyan drive to the
5 county.

6 The legislature finds that the county of Hawaii would be a
7 better steward of this public land than the department of land
8 and natural resources. Consequently, the legislature finds that
9 the responsibility for managing the properties located near or
10 adjacent to Banyan drive should be transferred to the county of
11 Hawaii.

12 Notwithstanding these findings, the legislature does not
13 authorize or support the transfer by sale or otherwise of the
14 fee simple title to the properties located near or adjacent to
15 Banyan drive. In general, the legislature does not support
16 alienating permanently the State's public land assets. The
17 legislature believes that public land should be held, managed,
18 and operated for the public's best interest. Furthermore, the



1 legislature does not intend to diminish the ceded land corpus or
2 cause the State to abdicate its fiduciary responsibility to
3 native Hawaiians.

4 The legislature notes that this Act requires a portion of
5 the gross revenues derived by the county of Hawaii from the
6 leased public land to be transmitted to the State to become
7 state realizations. The legislature intends that the revenues,
8 whether or not generated from activity on ceded land, be deemed
9 part of the pro rata portion of public land trust revenues
10 transmitted to the office of Hawaiian affairs.

11 SECTION 2. **Definitions.** For the purposes of this Act:

12 "Board" means the board of land and natural resources.

13 "County" means the county of Hawaii.

14 "Department" means the department of land and natural
15 resources.

16 "Subject public land" means properties located near or
17 adjacent to Banyan drive, identified as follows:

General Lease No.	Lessee	Tax Map Key: 3rd/	Area	Annual Rent	Lease Termination Date	Rental Reopening
3029	Reeds Bay Resort Hotel Ltd.	2-1-5:22	1.19 ac.	\$23,860	3/14/2015	N/A
3265	Hilo Bay Hotel Inc.	2-1-5:33	.586 ac.	\$11,460	3/14/2015	N/A



3266	Hilo Bay Hotel Inc.	2-1-5:34	.531 ac.	\$10,380	3/14/2015	N/A
3267	Hilo Bay Hotel Inc.	2-1-5:35	.495 ac.	\$9,660	3/14/2015	N/A
3269	Country Club-Hawaii, Inc.	2-1-5:20	1.166 ac.	\$49,000	3/14/2015	N/A
3961	Hilo Hawaiian Associates	2-1-3:05	5.00 ac.	\$133,200	4/14/2031	4/15/2016
4786	Hilo Trading Company Ltd.	2-1-3:08	.97 ac.	\$20,580	3/22/2037	3/23/2017
5018	Bayview Banyan Corp.	2-1-5:21	1.091 ac.	\$43,500	5/18/2032	5/19/2022
5844	Hawaii Outdoor Tours, Inc.	2-1-1:12; 2-1-5:13, 16, 17, 27, 32 & 46	Hotel 6.35 ac. Golf Course 62.576 ac.	\$500,000	1/31/2071	2/01/2036

1 Notwithstanding section 171-2(3), Hawaii Revised Statutes, or
2 any other law to the contrary, "subject public land" includes
3 land adjacent to the identified properties that is within the
4 Banyan drive right-of-way and held by the State in fee simple.

5 SECTION 3. Long-term lease of subject public land;
6 negotiations, approval. (a) Notwithstanding chapter 171,
7 Hawaii Revised Statutes, or any other law to the contrary, the



1 department shall in good faith negotiate with the county to
2 lease the subject public land to the county.

3 (b) If the department and the county reach an agreement
4 pursuant to subsection (a), the department shall submit the
5 proposed lease to the board for its review and approval. The
6 county shall submit the proposed lease to the appropriate county
7 officer or body, the review and approval of which is required
8 under county charter or ordinance.

9 The lease shall take effect only upon the approval of the
10 board and appropriate county officer or body.

11 Notwithstanding any law to the contrary, legislative
12 approval of the lease shall not be required.

13 SECTION 4. **Conditions of lease.** (a) The lease entered
14 into pursuant to section 3 of this Act shall conform with the
15 following conditions:

16 (1) The term of the lease shall be at least years, but
17 not more than years; except that the lease may
18 provide for termination before years for any
19 violation of the lease;

20 (2) The lease rent to be charged to the county shall be \$1
21 per year;



1 (3) The lease and subject public land shall be subject to
2 chapter 171, Hawaii Revised Statutes; provided that,
3 in the lease, the board and department may delegate
4 any of their authority under chapter 171, Hawaii
5 Revised Statutes, over the subject public land to the
6 county;

7 (4) Of the gross revenues derived by the county from any
8 sublease or rental of or concession on the subject
9 public land, or sale, lease, rental, or other
10 disposition of property or services on or flowing from
11 the subject public land, per cent shall be
12 transmitted by the county to the state director of
13 finance. The county shall transmit the revenues
14 within thirty days after the end of each fiscal
15 quarter. The transmitted revenues shall be deposited
16 by the state director of finance into the special land
17 and development fund established by section 171-19,
18 Hawaii Revised Statutes. For the purposes of this
19 paragraph, "gross revenues" shall not include any
20 taxes or improvement district assessments imposed by
21 the county and collected from any person subleasing or
22 otherwise using the leased public land or fees imposed



1 and collected by the county for county governmental or
2 utility services;

3 (5) The county shall assume all leases and other
4 encumbrances on the subject public land that are
5 unexpired on the date of execution of the lease; and

6 (6) The subject public land shall be subject to applicable
7 state and county land use, planning, and building
8 laws; provided that this paragraph shall not be deemed
9 to prohibit the amendment of any law subsequent to the
10 approval of the lease.

11 (b) The lease may include any other terms or conditions
12 not inconsistent with subsection (a) or other provisions of this
13 Act.

14 (c) The lease may be modified by agreement of the board
15 and county, but shall not be renewed for a term longer than the
16 initial term.

17 SECTION 5. **Report to legislature.** (a) If a lease of the
18 subject public land is approved by all relevant parties pursuant
19 to section 3 of this Act before January 1, 2014, the department
20 shall notify the legislature within ten days of the last party's
21 approval of the lease.

1 (b) If a lease is not approved before January 1, 2014, the
2 department shall submit a report to the legislature prior to the
3 convening of the regular session of 2014 on the action taken
4 pursuant to this Act, progress made to reach agreement on a
5 lease of the subject public land, problems encountered during
6 negotiations, and proposed solutions to the problems.

7 SECTION 6. **Non-impairment intent.** It is the intent of
8 this Act not to jeopardize the receipt of any federal aid or to
9 impair the obligation of the State or county of Hawaii, or any
10 agency respectively thereof, to the holders of any bond issued
11 by the State or by any agency, and to the extent, and only to
12 the extent, necessary to effectuate this intent, the governor
13 may modify the strict provisions of this Act, but shall promptly
14 report any modification with reasons thereof to the legislature
15 at its next session thereafter for review by the legislature.

16 SECTION 7. This Act shall take effect on July 1, 2013, and
17 shall be repealed on December 31, .



Report Title:

Banyan Drive; DLNR; Lease; County of Hawaii

Description:

Requires DLNR to enter into negotiations with the county of Hawaii for the lease of certain properties associated with Banyan drive to the county. Requires DLNR to report to the legislature a lease agreement, or progress made if no agreement has been reached by 01/01/2014. Effective 07/01/2013. (SD2)

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

