
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.



1 The purpose of this Act is to establish a four-year pilot
2 project in counties with a population between 170,000 and
3 200,000 that:

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

12 SECTION 2. (a) There is established within the department
13 of land and natural resources a four-year pilot project to be
14 known as the public land lease pilot project. The pilot project
15 shall:

- 16 (1) Be conducted in counties with a population between
17 170,000 and 200,000 where leases of public land are
18 being utilized; and
- 19 (2) Examine the benefits to both the State and to lessees
20 of public lands of:



1 (A) Allowing lessees of public lands to relinquish a
2 held lease during the second half of the lease
3 period;

4 (B) Allowing the sale of such relinquished leases at
5 public auction; and

6 (C) Not requiring relinquishing lessees to remove
7 improvements on leased land for valuation
8 purposes under certain conditions.

9 (b) Notwithstanding any other provision of law to the
10 contrary, in fulfilling the purposes of subsection (a), a lessee
11 of public land that is within the jurisdiction of the pilot
12 project and subject to the management, administration, or
13 control of the department, may relinquish a lease during the
14 last half of the term of the lease, as provided in this Act.

15 (c) Prior to relinquishing the lease, the lessee shall:

16 (1) Provide the board with not less than ninety days
17 written notice of the intent to relinquish the lease;
18 and

19 (2) Contract with a real estate appraiser licensed or
20 certified pursuant to chapter 466K, Hawaii Revised



1 Statutes, to determine the current depreciated or
2 residual value of any improvements to the land.
3 If the board fails to agree to the appraised residual value of
4 the improvements, the department may contract with an appraiser
5 licensed or certified pursuant to chapter 466K, Hawaii Revised
6 Statutes, and agreed to by the lessee, and the value shall be
7 determined by arbitration as provided in chapter 658A, Hawaii
8 Revised Statutes. In the event that the lessee disagrees with
9 the department's selection of the appraiser, the board shall
10 select the appraiser. The cost of contracting with the
11 appraiser shall be borne entirely by the lessee.

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

19 (e) Upon relinquishment of the lease, the board shall
20 dispose of the land by public auction as provided in section
21 171-14, Hawaii Revised Statutes; provided that the auction upset



1 shall be the greater of the current ground rent or the appraised
2 fair market rent, as if the land were vacant and unimproved.
3 The relinquishing lessee may bid on the new lease at the public
4 auction; provided that if the relinquishing lessee does not bid
5 or is not awarded the lease after the public auction, the
6 relinquishing lessee shall vacate the land within one hundred
7 twenty days, unless the department agrees to allow a longer
8 term.

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

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



- 1 (h) This section shall not apply to:
- 2 (1) Any lessee who is in arrears in the payment of taxes,
3 rents, or other obligations owing to the State or any
4 county or who has had, during the five years preceding
5 the anticipated disposition of the public land at a
6 public auction, a previous sale, lease, license,
7 permit, or easement covering other public lands
8 canceled for failure to satisfy the terms and
9 conditions thereof; or
- 10 (2) Any lease that is subject to cancellation for failure
11 to satisfy the terms or conditions of a lease,
12 license, permit, or easement covering the public
13 lands.
- 14 (i) As used in this section, "improvements" means all
15 physical improvements to the land that are for the benefit of
16 the lessee, including but not limited to:
- 17 (1) Buildings, structures, driveways, roads, or fences
18 erected on or affixed to the land; and
- 19 (2) Water and sewer pipes, electricity and telephone lines
20 and cables, or other infrastructure necessary to the
21 utility of the land.



1 (j) The public land lease pilot project shall end on June
2 30, 2019.

3 (k) The department of land and natural resources shall
4 submit:

5 (1) A progress report of the pilot project, including
6 analysis of the issues set forth in subsection (a) and
7 recommendations on whether the project shall be
8 expanded to other counties, no later than twenty days
9 prior to the convening of the regular session of 2017;
10 and

11 (2) A final report on the operations and findings of the
12 pilot project, including any recommendations for
13 legislation, no later than twenty days prior to the
14 convening of the regular session of 2019.

15 SECTION 3. 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 4. 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 5. This Act shall take effect on July 1, 2050.



Report Title:

Public Lands; Relinquishment of Lease; Capital Improvements

Description:

Establishes within the department of land and natural resources, a four-year public land lease pilot project in counties with a population between 170,000 and 200,000. Authorizes lessees of public land to relinquish a lease. Provides for the disposition of the land and improvements at public auction after relinquishment. (HB518 HD1)

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