

S.B. NO. 2936

JAN 27 2016

A BILL FOR AN ACT

RELATING TO LAND DISPOSITIONS.

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

1 SECTION 1. Chapter 171, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§171- Disposition by negotiation; department of
5 transportation. (a) Upon a determination by the director of
6 transportation that the disposition by negotiation of public
7 lands encourages competition within the aeronautical, airport-
8 related, maritime, and maritime-related operations, the
9 department of transportation may, without board approval and
10 without regard to section 171-59 and section 171-16(c),
11 negotiate the disposition of lands under its control and
12 jurisdiction provided that:

13 (1) The land subject to the disposition shall be used for
14 aeronautical, airport-related, maritime, and maritime-
15 related operations; and

16 (2) The disposition shall not exceed a maximum term of
17 thirty-five years, except in the case of maritime and

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1 maritime-related operations, which may provide for a
2 maximum term of seventy years.

3 (b) The disposition by negotiation may include leases and
4 any other instruments of disposition.

5 (c) For the purposes of this section:

6 "Airport-related" means a purpose or activity that requires
7 air transportation to achieve that purpose or activity; or an
8 activity that generates revenue for the airport system as
9 provided in section 261-7.

10 "Maritime-related" means a purpose or activity that
11 requires and is directly related to the loading, off-loading,
12 storage, or distribution of goods and services of the maritime
13 industry; navigation of the sea; cargo handling and control;
14 storage, repair, maintenance, and servicing of marine and
15 marine-related equipment; sale, processing, and canning of fish
16 and fish products; and offices and accommodations for the
17 personnel and employees of persons engaged in maritime
18 operations."

19 SECTION 2. Section 171-11, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§171-11 Public purposes, lands set aside by the governor;
22 management. The governor may, with the prior approval of the

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1 board of land and natural resources, set aside public lands to
2 any department or agency of the State, the city and county,
3 county, or other political subdivisions of the State for public
4 use or purpose. All withdrawals of the lands or portions
5 thereof so set aside shall be made by the governor.

6 Any public lands set aside by the governor prior to the
7 enactment of this chapter, or any public lands set aside by the
8 governor of the Territory of Hawaii, shall be subject to the
9 provisions of this section.

10 Lands while so set aside for such use or purpose or when
11 acquired for roads and streets shall be managed by the
12 department, agency, city and county, county, or other political
13 subdivisions of the State having jurisdiction thereof, unless
14 otherwise provided by law. Such department, agency of the
15 State, the city and county, county, or other political
16 subdivisions of the State in managing such lands shall be
17 authorized to exercise all of the powers vested in the board in
18 regard to the issuance of leases, easements, licenses, revocable
19 permits, concessions, or rights of entry covering such lands for
20 such use as may be consistent with the purposes for which the
21 lands were set aside on the same terms, conditions, and
22 restrictions applicable to the disposition of public lands, as

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1 provided by this chapter all such dispositions, except for
2 public lands under the jurisdiction of the department of
3 transportation, being subject to the prior approval of the
4 board; provided that any nonrenewable dispositions granting
5 rights for a period not in excess of fourteen days shall not
6 require (1) the approval of the board or (2) public auction or
7 public advertisement for sealed tenders; and provided further
8 that disposition of lands set aside for use as agricultural
9 parks pursuant to chapter 166 shall not be subject to the prior
10 approval of the board. If at the time of the disposition of any
11 such leases the board shall have approved the same, any order
12 withdrawing or setting aside any or all of such lands for any
13 other public purpose shall be made subject to such
14 leases. Subject to section 5(f) of the Act of March 18, 1959
15 (73 Stat. 6), all proceeds from such lands shall be deposited
16 into the appropriate funds provided by law.

17 This section shall also apply where the purposes are the
18 uses and purposes of the United States; provided that all
19 revenues derived from the lands and improvements thereon shall
20 be paid to the department of land and natural resources by the
21 United States.

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1 Whenever lands set aside for a public purpose to the
2 various departments and agencies of the State, or to any city
3 and county, county, or other political subdivisions of the
4 State, or to the United States, are not being utilized or
5 required for the public purpose stated, the order setting aside
6 the lands shall be withdrawn and the lands shall be returned to
7 the department. The governor may withdraw public lands and,
8 with the prior approval of the board of land and natural
9 resources, set aside the withdrawn lands to another department
10 or agency of the State, the city and county, county, or
11 political subdivision of the State, or to the United States for
12 public use or purpose, provided that no structure on such lands
13 shall be built, demolished or altered until after the
14 legislative action or inaction as hereinbelow provided.

15 The power granted to the governor in this section to set
16 aside or withdraw or withdraw and set aside public lands shall
17 be exercised subject to disapproval by the legislature by two-
18 thirds vote of either the senate or the house of representatives
19 or by the majority vote of both, in any regular or special
20 session next following the date of the setting aside or
21 withdrawal, or withdrawal and setting aside.

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1 Whenever portions of lands set aside for a public purpose
2 to the various departments and agencies of the State, or to any
3 city and county, county, or other political subdivision of the
4 State are not presently utilized or required for the public
5 purpose stated, the board shall have the power, without
6 withdrawing the order setting aside the lands, to dispose of any
7 and all real property interest less than the fee in the portions
8 of such lands where the disposition is for a use which is
9 consistent or inconsistent with the purpose for which the land
10 was set aside. All funds derived from disposition by the board
11 shall be deposited in the general fund of the State or be paid
12 to the appropriate account; provided that all such dispositions
13 shall be with the prior written approval of the department,
14 agency, city and county, county, or other political subdivisions
15 of the State and the governor, and shall be undertaken in
16 compliance with all other applicable sections of this chapter."

17 SECTION 3. Section 171-59, Hawaii Revised Statutes, is
18 amended by amending subsection (b) to read as follows:

19 "(b) Disposition of public lands for [~~airline, aircraft,~~
20 ~~airport related,~~] agricultural processing, cattle feed
21 production, and aquaculture[~~, marine, maritime, and maritime-~~
22 ~~related~~] operations may be negotiated without regard to the

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1 limitations set forth in subsection (a) and section 171-16(c);
2 provided that:

3 (1) The disposition encourages competition within the
4 [aeronautical, ~~airport-related,~~] agricultural, and
5 aquaculture [~~, maritime, and maritime-related~~]
6 operations;

7 (2) The disposition shall not exceed a maximum term of
8 thirty-five years, except in the case of [+

9 ~~(A) Maritime and maritime related operations, which~~
10 ~~may provide for a maximum term of seventy years,~~
11 ~~and~~

12 ~~(B) Aquaculture]~~ aquaculture operations, which may
13 provide for a maximum term of sixty-five years;
14 provided that aquaculture operations in good
15 standing may seek to renew a lease issued under
16 this section and, during the lease term, may
17 engage in supportive activities that are related
18 to or integrated with aquaculture; and

19 (3) The method of disposition of public lands for cattle
20 feed production as set forth in this subsection shall
21 not apply after December 31, 1988.

22 For the purposes of this subsection:

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1 "Agricultural processing" means the processing of
2 agricultural products, including dairying, grown, raised, or
3 produced in Hawaii.

4 ~~["Airport related" means a purpose or activity that
5 requires air transportation to achieve that purpose or activity,
6 or an activity that generates revenue for the airport system as
7 provided in section 261-7.]~~

8 "Aquaculture" means the propagation, cultivation, or
9 farming of aquatic plants and animals in controlled or selected
10 environments for research, commercial, or stocking purposes,
11 including aquaponics or any growing of plants or animals with
12 aquaculture effluents.

13 ~~["Maritime related" means a purpose or activity that
14 requires and is directly related to the loading, off loading,
15 storage, or distribution of goods and services of the maritime
16 industry.] "~~

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act, upon its approval, shall take effect
20 on July 1, 2016.

21 INTRODUCED BY: 

22 BY REQUEST

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Report Title:

Disposition of Land for Airport-related and Maritime-related Operations

Description:

Clarifies the statute that authorizes the Department of Transportation to negotiate disposition of lands under its control for specific purposes.

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

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO LAND
DISPOSITIONS.

PURPOSE: Clarifies that for lands under the
Department of Transportation's control, the
department may dispose of such land without
the approval of the Board of Land and
Natural Resources.

MEANS: Add a new section to chapter 171, amend
section 171-11, and amend section 171-59(b),
Hawaii Revised Statutes.

JUSTIFICATION: The Department of Transportation is best
suited to manage lands under its
jurisdiction, especially with regard to land
dispositions for aeronautic, airport-
related, maritime, and maritime-related
uses. The department is directly connected
to these industries and operations and best
understands the industries' needs. The
original intent of section 171-59(b), as
expressed in a 1970 committee report, was to
protect and promote small or threatened
maritime-related businesses and operations.
Accordingly, the Department of
Transportation was given greater flexibility
to lease harbor lands and facilities, as
well as airport lands and facilities. The
Legislature recognized that the best
interests for the State are usually better
protected by disposing of lands by public
auction because it is more democratic and in
the long run results in more income to the
State. However, where a lease is issued to
airport-related and maritime-related
operations which are public utilities by
nature, the prime interest is service to the
public and the preservation of competition
in addition to income.

The interpretation of section 171-59 as written requires Board of Land and Natural Resources approval of these dispositions and this approval process minimizes the Department of Transportation's control of these dispositions and delays the award of these dispositions. Approximately 80 percent of all goods consumed in Hawaii are brought in through the state through either an airport or harbor facility. Almost all people traveling to, from, and between the Hawaiian Islands must also use either an airport or a commercial harbor facility. Given the critical role that these facilities, and the lands under these facilities, have in the state's economy, it is prudent for the function of the disposition of the public lands that support these operations be controlled by the Department of Transportation.

Impact on the public: The bill supports continued efficient aeronautic, airport-related, maritime, and maritime-related operations that support and sustain the state's economy.

Impact on the department and other agencies: This proposal will result in fewer items sent to the Board of Land and Natural Resources for approval.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

OTHER AFFECTED
AGENCIES: Land and Natural Resources.

EFFECTIVE DATE: July 1, 2016.