
A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. The legislature finds that the State of Hawaii
2 owns a large amount of land that is currently leased to
3 businesses for commercial purposes in the Banyan Drive and
4 Kanoelehua industrial areas of Hilo, Hawaii. The legislature
5 further finds that these leases are statutorily limited to
6 sixty-five years without the possibility of renewing the terms
7 of the lease, which leaves businesses that have existed in the
8 community for decades with limited options. Additionally, in
9 Act 142, Session Laws of Hawaii 2015, the legislature expressed
10 concern that one of the consequences of the state's public land
11 lease law is that existing lessees may have little incentive to
12 make, or the ability to finance, major repairs or improvements
13 to their leasehold properties during the last five to fifteen
14 years of the lease, which sometimes results in the deterioration
15 of infrastructure and facilities.

16 The legislature therefore concludes that creating a
17 mechanism to assist these lessees will support small businesses



1 and the Hilo community in general. The legislature is committed
2 to ensuring fair and equitable access in the leasing of public
3 lands.

4 The purpose of this Act is to serve the public use and
5 public purpose of state lands that are being used for commercial
6 purposes by allowing the lessees of state lands in the Banyan
7 Drive and Kanoelehua industrial areas of Hilo, Hawaii, who are
8 within the last ten years of their land lease, to voluntarily
9 request that the lease be put up to bid at a public auction and
10 by allowing the lessee to bid on a new lease.

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

14 "§171- Leases in the Banyan Drive and Kanoelehua
15 industrial areas of Hilo, Hawaii. (a) Notwithstanding any
16 other provision of law to the contrary, a lessee of public land
17 in the Banyan Drive and Kanoelehua industrial areas of Hilo,
18 Hawaii, that is subject to the management, administration, or
19 control of the department, may relinquish a lease during the
20 last ten years of the term of the lease, as provided in this
21 section.



1 (b) Prior to relinquishing the lease, the lessee shall:
2 (1) Provide the board with no less than ninety days'
3 written notice of the intent to relinquish the lease;
4 (2) Contract with a real estate appraiser licensed or
5 certified pursuant to chapter 466K to determine the
6 current depreciated or residual value of any
7 improvements to the land; and
8 (3) Contract with a real estate appraiser licensed or
9 certified pursuant to chapter 466K to determine the
10 fair market value of the land.

11 If the board fails to agree to the appraised value determined
12 pursuant to paragraph (2) or (3), the department may contract
13 with an appraiser licensed or certified pursuant to chapter 466K
14 and agreed to by the lessee, and the value or values not agreed
15 to by the board shall be determined by arbitration as provided
16 in chapter 658A. If the lessee disagrees with the department's
17 selection of the appraiser, the board shall select the
18 appraiser. The cost of contracting with the appraiser shall be
19 borne entirely by the lessee.

20 (c) Unless specifically required to do so by the board, a
21 relinquishing lessee shall not be required to remove

1 improvements or restore the land to a vacant condition; provided
2 that, without prejudice to any other rights or remedies that
3 either party may have, this subsection shall not indemnify a
4 relinquishing lessee from any claims regarding pollution or
5 contamination of the land with potentially hazardous substances.

6 (d) Upon relinquishment of the lease, the board shall
7 dispose of the land by public auction as provided in section
8 171-14; provided that the auction upset price shall be the
9 greater of the current ground rent or the appraised fair market
10 rent, as if the land were vacant and unimproved. The
11 relinquishing lessee may bid on the new lease at the public
12 auction; provided that, if the relinquishing lessee does not bid
13 or is not awarded the lease after the public auction, the
14 relinquishing lessee shall vacate the land within one hundred
15 twenty days, unless the department agrees to allow a longer term
16 to vacate.

17 (e) Lease terms for the new lease shall be determined by
18 the board; provided that if the lease is awarded after public
19 auction to any party other than the relinquishing lessee, the
20 lease rent shall include a premium equal to the residual value
21 of any improvements to the land, as determined pursuant to



1 subsection (b), which shall be paid to the relinquishing lessee
2 prior to transfer of the land and improvements to the new
3 lessee.

4 (f) The lease rent established in any new lease issued
5 pursuant to this section shall not be less than the greater of
6 the current ground rent or the appraised fair market rent of the
7 lease being relinquished pursuant to this section.

8 (g) This section shall not apply to:

9 (1) Any lessee who is in arrears in the payment of taxes,
10 rents, or other obligations owing to the State or any
11 county or who has had, during the five years preceding
12 the anticipated disposition of the public land at a
13 public auction, a sale, lease, license, permit, or
14 easement covering other public lands canceled for
15 failure to satisfy the terms and conditions thereof;

16 or

17 (2) Any lease that is subject to cancellation for failure
18 to satisfy the terms or conditions of a lease,
19 license, permit, or easement covering the public
20 lands.



1 (h) As used in this section, "improvements" means all
2 physical improvements to the land that are for the benefit of
3 the lessee, including but not limited to buildings, structures,
4 driveways, roads, or fences erected on or affixed to the land,
5 and water and sewer pipes, electricity and telephone lines and
6 cables, or other infrastructure necessary to the utility of the
7 land."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 4. If any provision of this Act, or the
12 application thereof to any person or circumstance, is held
13 invalid, the invalidity does not affect other provisions or
14 applications of the Act that can be given effect without the
15 invalid provision or application, and to this end the provisions
16 of this Act are severable.

17 SECTION 5. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

19



Report Title:

Public Lands; Leases; Hilo

Description:

Allows lessees of certain public land in the Banyan Drive and Kanoelehua industrial area of Hilo, Hawaii, to relinquish a lease during the last ten years of the term of the lease, subject to certain conditions, and allows the lessee to bid on the new lease at public auction. (Proposed SD1)

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