

CHAPTER 171
PUBLIC LANDS, MANAGEMENT AND DISPOSITION OF

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Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of part II of this chapter through June 30, 2017 or until completion. L 2012, c 218.

Development of watershed management strategies by University of Hawaii in at least two of Hawaii's most severely flood-impacted watersheds. L 2006, c 187.

Kakaako makai; conveyance of certain parcels to office of Hawaiian affairs. L 2012, c 15.

Priority mooring space for intra-county ferry service. L 2008, c 57, §2.

Relief for airport concessionaires (repealed July 1, 2013). L Sp 2009, c 33; L 2011, c 104, §2.

State purchase of private lands subject to approval. L 2015, c 119, §105.

Survey to identify potential historic districts and single-family residences for listing on Hawaii register of historic places; report to 2018 legislature. L 2015, c 89, §1.

Use of lands in public land trust; payments and accounting requirements. L 2006, c 178.

Water rights lease applications; annual reports to 2017-2020 legislature. L 2016, c 126, §2.

Cross References

Ala Wai boat harbor; leases, see §200-2.6.

Civil relief for state military forces, see chapter 657D.

Conclusive presumptions relating to duty of public entities to warn of dangers at public beach parks, see §663-1.56.

Disposition of state boating facility properties, see §200-2.5.

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Exception to liability for county lifeguard services, see §663-1.52.

Kaho'olawe island reserve, see chapter 6K.

Koke'e state park advisory council, see §171-8.5.

State facility renovation partnership program, see chapter 107D.

Transfer of non-agricultural park lands classified for agricultural use to department of agriculture, see chapter 166E.

Attorney General Opinions

Applies to any and all "public lands", including ceded lands or lands acquired by the State by other means. Att. Gen. Op. 95-3.

Law Journals and Reviews

Native Hawaiians, Self-Determination, and the Inadequacy of the State Land Trusts. 14 UH L. Rev. 519.

Demolition of Native Rights and Self Determination: Act 55's Devastating Impact through the Development of Hawaii's Public Lands. 35 UH L. Rev. 297 (2013).

"PART I. GENERAL PROVISIONS

§171-1 Definitions. In this chapter, if not inconsistent with the context:

"Abandoned property" or "property abandoned" means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels, that has been left unattended on land owned or controlled by the State without authority for a continuous period of more than twenty-four hours.

"Accreted lands" means lands formed by the gradual accumulation of land on a beach or shore along the ocean by the action of natural forces.

"Agriculture or agricultural" means the planting, cultivating, harvesting, and processing of crops, including those planted, cultivated, harvested, and processed for food, ornamental, grazing, or forestry purposes, and including aquatic life farmed or ranched as aquaculture as defined by section 187A-1.

"Animal unit" means one mature cow or horse; two yearling steers or heifers; five mature sheep; twelve weaned lambs; two colts.

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

"Carrying capacity" means the maximum number of animal units which an area will support over a period of years without injury to the soil, forage resources, tree growth, watershed, or unwarranted interference with other services of the land.

"Chairperson" means the chairperson of the board of land and natural resources.

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

"District" means the land district as constituted under this chapter.

"Holder of record having a security interest" is a person who is the owner or possessor of a security interest in any land

covered in section 171-21 and who has filed with the bureau of conveyances of the State and with the department a copy of the interest.

"Land" includes all interests therein and natural resources including water, minerals, and all such things connected with land, unless otherwise expressly provided.

"Land agent" means the land agent of the public lands of the district where the land is situated.

"Land license" means a privilege granted to enter land for a certain special purpose such as the removal of timber, soil, sand, gravel, stone, hapuu, and plants, but not including water rights, ground or surface, nor removal of minerals.

"Land patent" means a government grant of real estate in fee simple.

"Lease" means the right to possess and use land for a term of years.

"Person" includes individual, partnership, corporation, and association, except as otherwise defined in this chapter.

"Public purpose", as used in this chapter, unless the context clearly indicates otherwise, includes but shall not be limited to all public uses, the straightening of boundaries of public lands, acquisition of access to landlocked public lands, the consolidation of the holdings of public lands, development of houselots, farmlots, and industrial parks.

"Seized property" or "property seized" means any and all property, including personal property, items, materials, equipment, fixtures, motor vehicles, or vessels, that has been seized by the State as the result of an unauthorized use of or encroachment on land owned or controlled by the State.

"Unencumbered public lands" means any lands defined as public lands by section 171-2 and which have not been:

- (1) Set aside for any purpose, by statute, executive order, or other means to a governmental agency; or
- (2) Encumbered by lease, license, permit, easement, or other document issued by the department.

Unencumbered public lands include, but are not limited to, beach and coastal areas, submerged lands, and mountainous nonforest reserve, wildlife, or park areas. [L 1962, c 32, pt of §2; am L 1965, c 239, §1; Supp, §103A-1; HRS §171-1; am L 1971, c 30, §1; am L 1973, c 68, §2; am L 1986, c 184, §2; am L 1988, c 136, §1 and c 361, §2; am L 1993, c 81, §2; gen ch 1993; am L 2003, c 73, §1]

For an account of the change from the ancient Hawaiian land system, see *The Hawaiian Land Revolution*, Jon J. Chinen, 5 HBJ 11.

Case Notes

"Town lots". 17 H. 539.

Person seeking to enforce mechanic's lien is not within term "holder of record of any security interest". 51 H. 87, 451 P.2d 809.

Overall purpose of this chapter is preservation of assets of the State. 60 H. 228, 588 P.2d 430.

Surety on lease not necessarily a "holder of a security interest". 2 H. App. 118, 627 P.2d 284.

" **§171-2 Definition of public lands.** "Public lands" means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or

otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;

(9) Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;

(10) Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title; and

(11) Lands to which the high technology development corporation in its corporate capacity holds title;

provided that, except as otherwise limited under federal law and except for state land used as an airport as defined in section 262-1, public lands shall include the air rights over any portion of state land upon which a county mass transit project is developed after July 11, 2005. [L 1962, c 32, pt of §2; am L 1965, c 239, §37; Supp, §103A-2; HRS §171-2; am L 1981, c 116, §1; am L 1984, c 19, §1; am L 1987, c 337, §7(1); am L 1989, c 27, §2; am L 1990, c 86, §12; am L 1997, c 350, §14; am L 1998, c 102, §2 and c 176, §6; am L 2003, c 47, §1, c 73, §2, and c 93, §2; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2012, c 56, §1 and c 282, §2; am L 2013, c 38, §2; am L 2015, c 240, §4]

Cross References

Generally, see notes to Organic Act §73.

Legislative approval of sale or gift of lands, see §171-64.7.

Attorney General Opinions

Inasmuch as the genetic material or composition of the natural resources and things connected to public lands, including ceded lands, are an integral part of those resources and things, title to biogenetic resources will still be held by State if it has not sold the land. Legal title to biogenetic resources gathered from state public lands will not still be vested in the State if third persons were allowed to remove from public lands the natural resource or thing from which the biogenetic resources were extracted or the State sold or leased title to a parcel of public land without reserving title or retaining control of the

resources or things connected to the transferred land, or their biogenetic contents. Att. Gen. Op. 03-3.

Law Journals and Reviews

Biopiracy in Paradise?: Fulfilling the Legal Duty to Regulate Bioprospecting in Hawai'i. 28 UH L. Rev. 387.

The Wash of the Waves: How the Stroke of a Pen Recharacterized Accreted Lands as Public Property. 34 UH L. Rev. 525 (2012).

Case Notes

Where plaintiffs challenged department of land and natural resources administrative regulations that required a permit for commercial activity (including weddings performed or arranged for a fee) on public beaches: (1) plaintiffs had standing to make an as-applied challenge; (2) since state unencumbered beaches are non-public fora for purposes of a First Amendment analysis, regulation need only satisfy a requirement of reasonableness, and the regulations passed the test; assuming beaches were public fora, the regulations passed a stricter test for constitutionality; and (3) even if the court had jurisdiction over the breach of settlement agreement (in prior action) claim, plaintiffs would not prevail on that claim. 685 F. Supp. 2d 1140.

" **§171-3 Department of land and natural resources.** (a) The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources. The department shall manage, administer, and exercise control over public lands, the water resources, ocean waters, navigable streams, coastal areas (excluding commercial harbor areas), and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law. The department shall also manage and administer the state parks, historical sites, forests, forest reserves, aquatic life, aquatic life sanctuaries, public fishing areas, boating, ocean recreation, coastal programs, wildlife, wildlife sanctuaries, game management areas, public hunting areas, natural area reserves, and other functions assigned by law.

(b) Notwithstanding subsection (a), beginning January 1, 2010, the authority to manage, administer, and exercise control over any public lands that are designated important agricultural lands pursuant to section 205-44.5, shall be transferred to the department of agriculture. [L 1962, c 32, pt of §2; am L 1963, c 135, §4; Supp, §103A-3; HRS §171-3; am L 1981, c 116, §2; am L

1983, c 15, §2; am L 1991, c 272, §4; am L 1999, c 6, §2; am L 2008, c 233, §16]

Cross References

Functions and authority, generally, see Const. art. XI, §2 and §26-15.

Interagency climate adaptation committee, see §225P-3.

Case Notes

Where the subject matter covered by Revised Ordinances of Honolulu §7-7.2 was the protection of the public against harm caused by dangerous dogs anywhere within the City's territorial limits by imposing criminal sanctions on dog owners who negligently fail to control their dangerous dogs, the ordinance was not aimed at regulating activities or managing resources within ocean waters; thus, the ordinance did not cover the same subject matter embraced by the department's authority to manage and control ocean waters pursuant to this section and did not conflict with state law. 120 H. 486 (App.), 210 P.3d 9.

" §171-4 Board of land and natural resources; terms and qualifications of members of the board; organization; expenses.

(a) The board of land and natural resources shall be composed of seven members, one from each land district and three at large, to be nominated and, by and with the advice and consent of the senate, appointed by the governor as provided in section 26-34. The term and removal of a member of the board and the filling of a vacancy on the board shall also be as provided in section 26-34. There shall be not more than three members on the board from the same political party.

(b) At least one member of the board shall have a background in conservation and natural resources, as evidenced by:

- (1) A college degree in a relevant field, including forestry, wildlife conservation, geology, environmental science, or marine biology; or
- (2) Work history sufficient to demonstrate an appropriate level of knowledge in the subject of land and natural resources, including parks and recreation, public lands management, natural area reserves, aquatic resources, boating and recreation, forestry and wildlife, water resources management, or conservation and resources.

(c) At least one member of the board, other than the member appointed pursuant to subsection (b), shall have

demonstrated expertise in native Hawaiian traditional and customary practices, as evidenced by:

- (1) A college degree in a relevant field, such as Hawaiian studies, native Hawaiian law, native Hawaiian traditional and customary practices, or related subject area;
- (2) Work history that demonstrates an appropriate level of knowledge in native Hawaiian traditional and customary practices; or
- (3) Substantial experience as a native Hawaiian traditional and customary practitioner.

(d) Each member shall disclose and file with the board a list of all transactions with the department of land and natural resources in which the member has a direct interest. The member shall also disclose all transactions with the department involving any corporation, association, partnership, or joint venture in which the member is an officer, partner, or employee. Any member having any interest, direct or indirect, in any matter before the board shall disqualify oneself from voting on or participating in the discussion of the matter.

(e) The governor shall select a chairperson of the board from among its members. The chairperson shall call and preside at meetings and may appoint a member of the board as secretary. The members of the board shall choose one of their number to act as chairperson during the absence or disability of the chairperson.

(f) The members of the board shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties. [L 1962, c 32, pt of §2; am L 1963, c 10, §1; Supp, §103A-4; HRS §171-4; gen ch 1985, 1993; am L 2001, c 215, §2; am L 2005, c 9, §2; am L 2014, c 104, §2]

Note

The 2014 amendment applies to the board of land and natural resources upon its next vacancy. L 2014, c 104, §4.

" **[\$171-4.5] Aha moku advisory committee; established.** (a)

There is established the aha moku advisory committee to be placed within the department of land and natural resources for administrative purposes. The committee may advise the chairperson of the board of land and natural resources in carrying out the purposes of this section.

(b) The committee shall consist of eight members appointed by the governor and confirmed by the senate from a list of nominations submitted by the aha moku councils of each island.

Oversight of the aha moku advisory committee shall be by the chairperson of the board of land and natural resources. The committee members shall select the committee chairperson from among the members.

(c) The members shall not receive compensation for their service, but shall be reimbursed for necessary expenses, including travel expenses, incurred while participating in meetings and events approved in advance by the chairperson of the board of land and natural resources.

The aha moku advisory committee may hire an executive director who shall be exempt from chapter 76. The executive director may hire an administrative or executive assistant to assist the executive director in accomplishing the purposes of the aha moku advisory committee.

(d) The aha moku advisory committee may provide advice on the following:

- (1) Integrating indigenous resource management practices with western management practices in each moku;
- (2) Identifying a comprehensive set of indigenous practices for natural resource management;
- (3) Fostering the understanding and practical use of native Hawaiian resource knowledge, methodology, and expertise;
- (4) Sustaining the State's marine, land, cultural, agricultural, and natural resources;
- (5) Providing community education and fostering cultural awareness on the benefits of the aha moku system;
- (6) Fostering protection and conservation of the State's natural resources; and
- (7) Developing an administrative structure that oversees the aha moku system.

(e) The committee shall submit an annual report in English and Hawaiian to the legislature and the chairperson of the board of land and natural resources no later than twenty days prior to the convening of each regular legislative session. The annual report shall include a list of all recommendations made by the committee and the resulting action taken by the department over the course of the prior year. [L 2012, c 288, §2]

" **§171-5 Meetings, regular, special; quorum.** Regular meetings of the board of land and natural resources shall be held not less than once a month and the board shall provide in its rules and regulations the number and dates for the regular meetings. Special meetings may be called by the chairperson at any time by giving notice thereof to each member present in the State at least five days prior to the date of the special meeting; provided that notice shall not be required if all

members present in the State agree and sign a written waiver of the notice.

However, no final action involving disposition of public lands may be had at such special meeting.

Any action taken by the board shall be by a simple majority of the members of the board; provided that a simple majority of the members present at a meeting and qualified to vote shall be required to allow any decision pursuant to section 183C-6(b). Four members of the board shall constitute a quorum to do business. The board shall keep accurate records and minutes of all meetings, special and regular, and they shall be public records. Copies of portions of the agenda relating to dispositions of land shall be made available to the public in the land office of each district at least three days before the meeting at which the matter will be discussed or voted upon. [L 1962, c 32, pt of §2; Supp, §103A-5; HRS §171-5; gen ch 1993; am L 2001, c 215, §3]

Cross References

Meetings and records, see chapter 92.

Case Notes

A quorum of the board is sufficient to conduct business, but any board action must be authorized by a majority of the total membership of the board (pre-2001 amendment). 102 H. 257, 75 P.3d 160.

Where a majority of the board (pre-2001 amendment) did not affirmatively approve or disapprove of electric company's application to modernize and expand electric generating station on conservation land within the time established, the board failed to render a "decision" so as to avoid the 180-day default mechanism of §183-41; thus, electric company was allowed to subject land to the use applied for. 102 H. 257, 75 P.3d 160.

" **§171-6 Powers.** Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

- (1) Adopt a seal;
- (2) Administer oaths;
- (3) Prescribe forms of instruments and documents;
- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;

- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
- (6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use;
- (8) Delegate to the chairperson or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
- (9) Use arbitration under chapter 658A to settle any controversy arising out of any existing or future lease;
- (10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;
- (11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;
- (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:
 - (A) Be fined not more than \$1,000 a day for the first offense;
 - (B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;

- (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
 - (D) Assume such costs as may result from adverse effects from such restoration; and
 - (E) Be liable for administrative costs incurred by the department and for payment of damages;
- (13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;
- (14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. Such amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (13);
- (15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:
- (A) Fined not more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
 - (B) Fined not more than \$10,000 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
 - (C) Fined not more than \$20,000 per violation for a third or subsequent violation within five years

of the last violation; provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and

- (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii state constitution;

- (16) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter. All revenue bonds shall be issued in the name of the department and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance;
- (17) Pledge or assign all or any part of the receipts and revenues of the department. The revenue bonds shall be payable from and secured solely by the revenue derived by the department from the industrial park or parks for which the bonds are issued;
- (18) Reimburse the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of this chapter;

- (19) Notwithstanding part II of chapter 205A to the contrary, plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the division of boating and ocean recreation of the department without the need to obtain a special management area minor permit or special management area use permit; and
- (20) Do any and all things necessary to carry out its purposes and exercise the powers granted in this chapter. [L 1962, c 32, pt of §2; am L 1965, c 239, §2; Supp, §103A-6; HRS §171-6; am L 1974, c 70, §1; am L 1982, c 109, §1; am L 1983, c 170, §2; am L 1984, c 117, §1; am L 1985, c 39, §1; am L 1989, c 249, §1; am L 1991, c 89, §1 and c 145, §3; am L 1994, c 162, §2; am L 2001, c 265, §4; am L 2008, c 215, §2; am L 2011, c 153, §2]

Case Notes

Where plaintiffs challenged department of land and natural resources administrative regulations that required a permit for commercial activity (including weddings performed or arranged for a fee) on public beaches: (1) plaintiffs had standing to make an as-applied challenge; (2) since state unencumbered beaches are non-public fora for purposes of a First Amendment analysis, regulation need only satisfy a requirement of reasonableness, and the regulations passed the test; assuming beaches were public fora, the regulations passed a stricter test for constitutionality; and (3) even if the court had jurisdiction over the breach of settlement agreement (in prior action) claim, plaintiffs would not prevail on that claim. 685 F. Supp. 2d 1140.

Board does not have power to settle legal disputes without approval of attorney general. 57 H. 259, 554 P.2d 761.

There is no statutory requirement that board promulgate rules relative to the determination of parcel sizes for leasing. 60 H. 228, 588 P.2d 430.

" **[§171-6.4] General administrative penalties.** (a) Except as otherwise provided by law, the board or its authorized representative by proper delegation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000;
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(b) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense. [L 2004, c 142, §4]

" **§171-6.5 REPEALED.** L 2004, c 142, §7.

" **§171-7 General duties of the board.** Except as provided by law the board of land and natural resources through the chairperson shall:

- (1) Maintain an accurate inventory of public lands;
- (2) Prevent illegal activities on, unlawful occupation of, or trespassing on public lands;
- (3) Cause all trespassers and persons unlawfully occupying public lands, and their effects, and all animals trespassing on the lands to be removed therefrom and to impound the animals according to law;
- (4) Enter on any public land in order to take possession thereof, and to resume possession of any public land in case of surrender, forfeiture, or escheat;
- (5) Enforce contracts respecting sales, leases, licenses, permits, or other disposition of public lands;
- (6) Conduct all public auctions and sales pertaining to the disposition of public lands and other property authorized by the board;
- (7) Recover money due the State for damage done to any public lands by wrongful entry and occupation or by wrongful removal therefrom or destruction of any property;
- (8) Bring such actions and proceedings as may be necessary to carry out the powers and duties of the board in the name of the State and to defend such actions brought against the State as may be authorized;

- (9) Keep a record of all official transactions, relating to public lands within the chairperson's jurisdiction and such record shall be a public record;
- (10) Administer oaths in all matters pertaining to the administration of the public lands. [L 1962, c 32, pt of §2; am L 1965, c 239, §3; Supp, §103A-7; HRS §171-7; am L 1984, c 154, §1; gen ch 1985, 1993]

Cross References

Conservation and resources enforcement program, see chapter 199.

" **§171-8 Land agents and other employees.** The board shall be represented in each land district by a district land agent. The board may employ other necessary employees.

The district land agent shall exercise the powers and duties delegated by the board and shall report to the designated representative of the board.

The appointment, removal, and compensation of district land agents and other employees shall be determined in accordance with chapter 76. [L 1962, c 32, pt of §2; am L 1965, c 202, §1; Supp, §103A-8; HRS §171-8; am L 1971, c 154, §1; am L 1981, c 116, §3; am L 2000, c 253, §150]

" **[§171-8.5 Koke'e state park advisory council.]** (a) There is established a Koke'e state park advisory council, to be placed within the department of land and natural resources for administrative purposes only. The advisory council shall consist of nine voting members appointed in equal numbers by the governor, the speaker of the house of representatives and the president of the senate in accordance with section 26-34, and four ex-officio nonvoting members.

(b) The voting members of the advisory council shall be Kaua'i residents and shall possess general knowledge of at least one of the four strategic areas listed below:

- (1) Education;
 - (2) Cultural resources;
 - (3) The environment; or
 - (4) Native plants, animals, and ecosystems.
- (c) The ex-officio nonvoting members shall be as follows:
- (1) A representative of the United States Fish and Wildlife Service;
 - (2) A representative of the department of land and natural resources forestry and wildlife division, as designated by the chairperson of the board of land and natural resources;

(3) A representative of the department of land and natural resources state parks division, as designated by the chairperson of the board of land and natural resources; and

(4) A representative of the county of Kauai, as designated by the Kauai county council.

(d) The voting members of the advisory council shall serve not more than two consecutive three-year terms, with each term beginning on July 1; provided that the initial terms of the appointed members that commence after June 30, 2008, shall be staggered as follows:

(1) Three members to serve three-year terms;

(2) Three members to serve two-year terms; and

(3) Three members to serve a one-year term.

For the initial appointments, the governor, the president of the senate, and the speaker of the house of representatives shall designate each of their appointees to serve a one, two, or three-year term.

(e) The members of the advisory council shall not receive compensation for their services but shall be reimbursed for expenses, including travel expenses, incurred in their duties relating to the council.

(f) A chairperson shall be elected annually by the advisory council from among the council's voting members; provided that no member may serve as chairperson for more than two consecutive years.

(g) Five voting members of the advisory council shall constitute a quorum to do business and any action taken by the advisory council shall be validated by a simple majority of the quorum.

(h) The advisory council's responsibilities shall include:

(1) Reviewing and assisting in updating and revising the Koke'e state park master plan;

(2) Advising and assisting in the management of the Koke'e recreational cabin leases;

(3) Enhancing community education and cultural awareness of Koke'e state park;

(4) Participating in the protection and preservation of Koke'e state park's natural and cultural resources; and

(5) Advising and assisting in the overall implementation of the Koke'e state park master plan. [L 2008, c 223, §3]

" **[§171-8.6] Risk assessment working group.** (a) There is established a risk assessment working group that shall be administratively attached to the department. The risk

assessment working group shall provide consultation to the board regarding the design and placement of warning signs, devices, or systems on improved public lands as defined in section 663-51, including any comprehensive plan submitted by the State, a county, or managing entity, to the board for approval. The risk assessment working group shall consist of the following members, who shall serve without compensation:

- (1) The chairperson of the board, or designee;
- (2) The mayor of each county, or designee;
- (3) The administrators of the department's division of forestry and wildlife and the division of state parks, or their designees;
- (4) The attorney general, or designee; and
- (5) A person appointed by the chairperson of the board knowledgeable in warning sign design.

[(b)] The risk assessment working group shall submit a report of its recommendations and of the consultation provided to the board of land and natural resources under [Act 82, Session Laws of Hawaii 2003], including a listing of warning signs, devices, and systems on improved and unimproved public lands subsequently approved or disapproved by the board, to the legislature no later than twenty days prior to the convening of each regular session. [L 2003, c 82, §§3, 4, 8; am L 2007, c 152, §5; am L 2009, c 81, §3; am L 2014, c 86, §2]

Revision Note

L 2003, c 82, §4 is codified to this section as subsection (b) pursuant to §23G-15.

Cross References

Limitations on public entity liability in actions based upon duty to warn of natural conditions, see chapter 663, pt VI.

" **§171-9 Land districts.** For the purposes of this chapter the State is divided into the following land districts:

First land district: The island of Hawaii and the reefs and reef lands off the shores of the island of Hawaii.

Second land district: The islands of Maui, Molokai, Lanai, Kahoolawe, and Molokini and the reefs and reef lands off the shores of these islands.

Third land district: The island of Oahu and all other islands and reefs in the State of Hawaii not included in the other districts.

Fourth land district: The islands of Kauai, Niihau, Lehua, and Kaula, and the reefs and reef lands off the shores of these islands. [L 1962, c 32, pt of §2; Supp, §103A-9; HRS §171-9]

Cross References

Districts, generally, see §4-1.

" **§171-10 Classes of lands.** The board of land and natural resources shall classify all public lands and in doing so be guided by the following classifications:

1. Intensive agricultural use

(A) First class--Lands highly productive of intensive crops such as sugarcane, pineapples, truck crops, and orchard crops.

(B) Second class--Lands having medium productivity for intensive crops.

(C) Third class--Lands having fair to marginal productivity for intensive crops.

2. Special livestock use

(A) First class--Lands highly suitable for special livestock uses such as swine, dairy, and poultry production. In making the determination, consideration shall be given to drainage, climate, topography, proximity to market, and transportation and compatibility to adjoining land use, among other considerations. "Dairy" as used for disposition purposes means a "dry lot" dairy without allowance for grazing.

(B) Second class--Lands suitable for special livestock uses, but inferior to those of first class.

3. Pasture use

(A) First class--Lands having a potentially high economic animal unit carrying capacity and capable of correspondingly high liveweight gains per acre per year, such as, less than five acres per animal unit per year and more than one hundred pounds live beef gains per animal unit per acre per year.

(B) Second class--Lands having a potentially medium economic animal unit carrying capacity and capable of moderate liveweight gains per acre per year, such as, five to twenty acres per animal unit per year and twenty to one hundred pounds live beef gains per animal unit per acre per year.

(C) Third class--Lands having a relatively low animal unit carrying capacity and producing correspondingly low liveweight gains per acre per year, such as, more than twenty acres per animal unit per year and less than twenty pounds average live beef gains per animal unit per acre per year.

4. Commercial timber use

(A) First class--Lands of high suitability for growth of merchantable timber having mean annual growth potential under normal forest management practices with yields exceeding amounts such as one thousand board feet per acre, and with location and terrain presenting favorable logging, transportation, and marketing conditions.

(B) Second class--Lands of high suitability for growth of merchantable timber having mean annual growth potential under normal forest management practices with yields exceeding amounts such as one thousand board feet per acre, and with location and terrain presenting less favorable logging, transportation, and marketing conditions.

(C) Third class--Lands of medium suitability for growth of merchantable timber having mean annual growth potential in amounts such as five hundred to one thousand board feet per acre under normal forest management practices, and with location and terrain presenting favorable logging, transportation, and marketing conditions.

(D) Fourth class--Lands of medium suitability for growth of merchantable timber having mean annual growth potential in amounts such as five hundred to one thousand board feet per acre under normal forest management practices, and with location and terrain presenting less favorable logging, transportation, and marketing conditions.

(E) Fifth class--Lands of relatively low suitability for growth of merchantable timber having mean annual growth potential less than an amount such as five hundred board feet per acre, and with location and terrain presenting favorable logging, transportation, and marketing conditions.

(F) Sixth class--Lands of relatively low suitability for growth of merchantable timber having mean annual growth potential less than an amount such as five hundred board feet per acre, and with location and terrain presenting less favorable logging, transportation, and marketing conditions.

5. Quarry use

Lands having sufficient quantity and quality of rock, gravel, and sand for purpose of commercial use.

6. Mining use

Lands bearing sufficient quantity and quality of mineral products for purpose of commercial mining and use.

7. Recreational use

Lands suitable for use and development as parks, playgrounds, historical sites, natural area, camp grounds, wildlife refuge, scenic sites, and other such uses.

8. Watershed use

Lands suitable for the use and development as watersheds or for the development of water, and requiring necessary restrictions on other uses.

9. Residential use

Lands suitable and economically feasible for residential development and use.

10. Commercial and industrial use

Lands suitable and economically feasible for commercial and industrial development and use.

11. Hotel, apartment, and motel use

Lands suitable and economically feasible for hotel, apartment, and motel development and use.

12. Resort use

Lands suitable and economically feasible for resort development and use.

13. Unclassified uses

Lands not otherwise classifiable under the foregoing sections. [L 1962, c 32, pt of §2; Supp, §103A-10; HRS §171-10]

Case Notes

Nothing in this chapter requires board to establish a general plan to determine best use of property. 60 H. 228, 588 P.2d 430.

" **§171-11 Public purposes, lands set aside by the governor; management.** The governor may, with the prior approval of the board of land and natural resources, set aside public lands to any department or agency of the State, the city and county, county, or other political subdivisions of the State for public use or purpose. All withdrawals of the lands or portions thereof so set aside shall be made by the governor.

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

Lands while so set aside for such use or purpose or when acquired for roads and streets shall be managed by the department, agency, city and county, county, or other political subdivisions of the State having jurisdiction thereof, unless otherwise provided by law. Such department, agency of the State, the city and county, county, or other political subdivisions of the State in managing such lands shall be authorized to exercise all of the powers vested in the board in regard to the issuance of leases, easements, licenses, revocable permits, concessions, or rights of entry covering such lands for such use as may be consistent with the purposes for which the

lands were set aside on the same terms, conditions, and restrictions applicable to the disposition of public lands, as provided by this chapter all such dispositions being subject to the prior approval of the board; provided that any nonrenewable dispositions granting rights for a period not in excess of fourteen days shall not require (1) the approval of the board or (2) public auction or public advertisement for sealed tenders; and provided further that disposition of lands set aside for use as agricultural parks pursuant to chapter 166 shall not be subject to the prior approval of the board. If at the time of the disposition of any such leases the board shall have approved the same, any order withdrawing or setting aside any or all of such lands for any other public purpose shall be made subject to such leases. Subject to section 5(f) of the Act of March 18, 1959 (73 Stat. 6), all proceeds from such lands shall be deposited into the appropriate funds provided by law.

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

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

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

Whenever portions of lands set aside for a public purpose to the various departments and agencies of the State, or to any city and county, county, or other political subdivision of the State are not presently utilized or required for the public purpose stated, the board shall have the power, without

withdrawing the order setting aside the lands, to dispose of any and all real property interest less than the fee in the portions of such lands where the disposition is for a use which is consistent or inconsistent with the purpose for which the land was set aside. All funds derived from disposition by the board shall be deposited in the general fund of the State or be paid to the appropriate account; provided that all such dispositions shall be with the prior written approval of the department, agency, city and county, county, or other political subdivisions of the State and the governor, and shall be undertaken in compliance with all other applicable sections of this chapter. [L 1962, c 32, pt of §2; am L 1963, c 173, §1; am L 1965, c 239, §8; Supp, §103A-11; am L 1967, c 189, §4 and c 234, §1; HRS §171-11; am L 1974, c 16, §1; am L 1981, c 116, §4; am L 1988, c 22, §6]

Cross References

Act of March 18, 1959 is the Hawaii Admission Act, see volume 1.

Attorney General Opinions

Allowance of use of armories for private functions must be in accordance with this section if armories are on lands set aside by executive orders, and in accordance with §121-19 if armories are on license from federal government. Att. Gen. op. 71-1.

Law Journals and Reviews

Kapiolani Park Preservation Society v. City and County of Honolulu: The Lease of Public Park Land as a Breach of a Charitable Trust. 11 UH L. Rev. 199.

Case Notes

Mentioned: 53 H. 567, 498 P.2d 631.

" **§171-12 Permanent register of applicants for public lands.** The board of land and natural resources shall establish and maintain in each land district a register in which all persons desiring to acquire public lands in the district may register. The board may require the persons to submit information in writing and under oath to determine the eligibility of any registrant to acquire such lands. [L 1962, c 32, pt of §2; Supp, §103A-12; HRS §171-12]

" **§171-13 Disposition of public lands.** Except as otherwise provided by law and subject to other provisions of this chapter, the board may:

- (1) Dispose of public land in fee simple, by lease, lease with option to purchase, license, or permit; and
- (2) Grant easement by direct negotiation or otherwise for particular purposes in perpetuity on such terms as may be set by the board, subject to reverter to the State upon termination or abandonment of the specific purpose for which it was granted, provided the sale price of such easement shall be determined pursuant to section 171-17(b).

No person shall be eligible to purchase or lease public lands, or to be granted a license, permit, or easement covering public lands, who has had during the five years preceding the date of disposition a previous sale, lease, license, permit, or easement covering public lands canceled for failure to satisfy the terms and conditions thereof. [L 1962, c 32, pt of §2; Supp, §103A-13; HRS §171-13; am L 1973, c 205, §1; am L 1976, c 193, §1; am L 1980, c 4, §1; am L 1983, c 25, §1; am L Sp 2001 3d, c 15, §§12, 13; am L 2002, c 69, §1]

Note

Relief for airport concessionaires (repealed July 1, 2013). L Sp 2009, c 33; L 2011, c 104, §2.

" **§171-14 Auction.** Except as otherwise specifically provided, all disposition of public lands shall be made at public auction after public notice as provided in section 171-16. All such auctions shall be held at the door of the office of the land agent or at such other place as is convenient in the district in which the land is located, and shall be conducted by the chairperson or the land agent or by any other authorized employee of the department of land and natural resources under the direction of the board of land and natural resources, all of whom shall perform this service without extra compensation. [L 1962, c 32, pt of §2; am L 1963, c 28, §1; am L 1965, c 239, §3; Supp, §103A-14; HRS §171-14; gen ch 1993]

" **§171-14.5 Auction pre-qualification; agricultural and pasture leases.** (a) Whenever used in this section, unless otherwise apparent from the context:

"Farm" also means "ranch" and "farmer" also means "rancher".

"Individual" means a natural person who is not a part of a partnership, corporation, or joint venture which is a potential bidder under this section.

"Nonindividual concern" means a partnership, corporation, or joint venture properly formed under law and which is a potential bidder under this section.

(b) Any other law to the contrary notwithstanding, to be eligible to bid in an auction for agricultural or pasture leases, a potential bidder shall be a bona fide individual farmer or a nonindividual farm concern:

- (1) Who has spent not less than two years, full-time, in farming operations;
- (2) Who is an owner-operator of an established farm conducting a substantial farming operation;
- (3) Who for a substantial period of the individual's adult life resided on a farm and depended on farm income for a livelihood;
- (4) Who is an individual who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the auction obtained the major portion of their income from farming operations;
- (5) Is an individual with a college degree in agriculture;
- (6) Is an individual who by reason of ability, experience, and training as a vocational trainee is likely to successfully operate a farm;
- (7) Who has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant Act as amended, or as may hereafter be amended, for the acquisition of a farm;
- (8) Who is an individual who is displaced from employment in an agricultural production enterprise;
- (9) Who is a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects;
- (10) Who possesses the qualifications under the new farmer program pursuant to section 155-1; or
- (11) Who possesses other qualifications as the board of land and natural resources may prescribe pursuant to section 171-6 and this section. [L 1982, c 131, §1; am L 2000, c 51, §14]

" **§171-15 Drawing.** Whenever public lands are to be sold or leased by drawing, the board of land and natural resources shall notify by publication of applications for the drawing as provided in section 171-16 with such details concerning the drawing as it shall deem necessary and desirable. Applications to participate in the drawing must be filed with the board

within two weeks after the last publication date. Within forty-five days after the closing date for applications, the board shall screen the qualifications of the applicants, select those qualified to participate, notify all applicants of the selection and conduct a drawing. The date of the drawing shall be published as set forth in section 171-16. The award shall be made within one week and all applicants shall be notified of the result of the drawing. The lease or patent shall be issued within ninety days after the drawing or when conditions of sale are fulfilled. [L 1962, c 32, pt of §2; Supp, §103A-15; HRS §171-15]

" **§171-16 Notices.** (a) Auctions. Public notice of any proposed disposition by auction shall be given at least once statewide and once in the county where the land being disposed of is located. Notice of the auction shall contain the following:

- (1) Time and place of the auction;
- (2) General description of the land, including the address and tax map key;
- (3) Specific use for which the disposition is intended; and
- (4) Upset price or rental to be charged. The maps showing the metes and bounds description and the classification of the land shall be kept in the office of the board of land and natural resources and of its land agent in the county in which the land is situated, and shall be open for inspection at all reasonable hours.

(b) Drawings. Whenever a disposition by drawing by lots is proposed, public notice inviting applications to participate in the drawing shall be given once statewide and once in the county where the land being disposed of is located. The notice shall contain:

- (1) The qualifications required of applicants;
- (2) A general description of the land, including the address and tax map key;
- (3) Specific use for which the disposition is intended; and
- (4) Date by which all applications must be filed, which date shall be not less than fourteen days after the last notice.

Within forty-five days after the closing date for applications, the board shall select those qualified to participate in the drawing, notify all applicants as to whether or not they qualified, and conduct the drawing.

The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing, shall be mailed to each applicant, whether or not the applicant, in fact, qualified. The notice of the drawing shall state the time and place of the drawing. Upon completion of the drawing, the award shall be announced within one week, and the lease or patent issued within ninety days after the drawing or when the conditions of the sale are fulfilled.

(c) Negotiation. Public notice of a proposed disposition by negotiation shall be given at least once statewide and once in the county where the land being disposed of is located; provided that the notices are not required for permits, and dispositions of remnants. The notice shall invite proposals and state in general terms the size, location, and prices or rental of lots to be sold or leased, the terms of sale or lease, and the last date on which application will be received by the board, which date shall not be less than thirty days after the last date of the notice. The notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons.

(d) Exchanges; quitclaim; submerged and reclaimed lands; reservations and easements. Whenever it is proposed to exchange public lands for private land pursuant to section 171-50, quitclaim public land or any interests of the State in private land pursuant to section 171-51, dispose of submerged or reclaimed public land pursuant to subsections (b) and (d) of section 171-53, dispose of a land license by negotiation pursuant to section 171-54, or dispose of reserved rights and easements pursuant to section 171-57, public notice of the disposition shall be given at least once statewide and once in the county where the land or other interests being disposed of are located. The notice shall state in general terms the size and location of the public lands proposed to be disposed.

(e) In addition to giving public notice, any public notice required under this section shall also be posted on the Internet in an easily-located manner. [L 1962, c 32, pt of §2; am L 1963, c 28, §2; am L 1965, c 239, §9; Supp, §103A-16; am L 1967, c 234, §§2, 4; HRS §171-16; am L 1974, c 78, §1; gen ch 1985; am L 1998, c 2, §34; am L 2001, c 202, §1]

" **§171-17 Appraisals.** (a) The appraisal of public lands for sale or lease at public auction for the determination of the upset price may be performed by an employee of the board of land and natural resources qualified to appraise lands, or by one but not more than three disinterested appraisers whose services shall be contracted for by the board; provided that the upset price or upset rental shall be determined by disinterested

appraisal whenever prudent management so dictates. No such lands shall be sold or leased for a sum less than the value fixed by appraisal; provided that for any sale or lease at public auction, the board may establish the upset sale or rental price at less than the appraisal value set by an employee of the board and the land may be sold or leased at that price. The board shall be reimbursed by the purchaser or lessee for the cost of any appraisal required to be made by a disinterested appraiser or appraisers contracted for by the board.

(b) The sale price or lease rental of lands to be disposed of by drawing or by negotiation shall be no less than the value determined by:

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

or

(2) A disinterested appraiser or appraisers whose services shall be contracted for by the board, and the appraisal, and any further appraisal with the approval of the board, shall be at the cost of the purchaser;

provided that the sale price or lease rental shall be determined by disinterested appraisal whenever prudent management so dictates; provided further that if the purchaser does not agree upon the sale price or lease rental, the purchaser may appoint an appraiser who shall conduct an appraisal on behalf of the purchaser. If, after the purchaser's appraisal, the board and the purchaser do not agree on the sale price or lease rental, the parties shall make a good faith effort to resolve the dispute through nonbinding mediation by a single mediator, appointed by mutual agreement of the parties. The cost of mediation shall be borne equally by the parties. If mediation does not resolve the dispute, the purchaser's appraiser together with the board's appraiser shall appoint a third appraiser, and the sale price or lease rental shall be determined by arbitration as provided for in chapter 658A, which shall be final and binding. The purchaser shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the purchaser and the board.

(c) In the repurchase of any land by the board, the board shall have the option to repurchase the land for the original sale price or the fair market value at the time of repurchase, whichever is the lower. Any improvements affixed to the realty shall be purchased at their fair market value. At the time of the repurchase, the fair market value of the land, and the improvements, if any, shall be determined by a qualified appraiser whose services shall be contracted for by the board; provided that if the owner does not agree upon the value, the owner may appoint the owner's own appraiser who shall conduct an appraisal on behalf of the owner. If, after the owner's

appraisal, the board and the owner do not agree on the sale price, the parties shall make a good faith effort to resolve the dispute through nonbinding mediation by a single mediator, appointed by mutual agreement of the parties. The cost of mediation shall be borne equally by the parties. If mediation does not resolve the dispute, the owner's appraiser together with the board's appraiser shall appoint a third appraiser, and the value shall be determined by arbitration as provided in chapter 658A. The owner shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the owner and the board.

(d) If a reopening of the rental to be paid on a lease occurs, the rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by:

- (1) An employee of the department qualified to appraise lands; or
- (2) A disinterested appraiser whose services shall be contracted for by the board;

and the lessee shall be promptly notified of the determination and provided with the complete appraisal prepared by the board or the board's appraiser; provided that if the lessee does not agree upon the fair market rental, the lessee may appoint the lessee's own appraiser and the lessee shall provide the board with the complete appraisal prepared by the lessee's appraiser. Each party shall pay for its own appraiser. If the board's and the lessee's appraisers do not agree upon the lease rental, the lessee and the board shall in good faith attempt to resolve the dispute by nonbinding mediation by a single mediator mutually agreed upon by the parties. If the dispute is not resolved by the mediation, the fair market rental shall be determined by arbitration as provided in chapter 658A, which shall be final and binding. Either the board or the lessee may initiate arbitration by a written demand to the other party. The arbitration shall be conducted by a single arbitrator, who shall be an attorney licensed in the State, a person with experience in contracts and real estate valuation, or another qualified person, who shall be mutually agreed upon by the parties. If an arbitrator is not selected within fifteen days of the demand for arbitration, appointment of an arbitrator may be requested by either party by motion made to the circuit court in the circuit in which the land is located. The cost of mediation or arbitration shall be borne equally by the lessee and the board. Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six-month notice required, shall apply to

leases with original lease rental reopening dates effective before and after July 1, 1996.

(e) Complete appraisal reports, including all comparables relied upon in the appraisal reports, shall be available for study by the public. All complete appraisal reports shall be provided to the opposing party prior to the commencement of mediation or arbitration, if applicable, of the valuation dispute. [L 1962, c 32, pt of §2; am L 1963, c 135, §§1, 2, 3; am L 1965, c 239, §10; Supp, §103A-17; HRS §171-17; am L 1976, c 147, §1; am L 1985, c 116, §1; gen ch 1985; am L 1986, c 48, §1; am L 1993, c 132, §1; am L 1996, c 233, §1 and c 234, §1; am L 2001, c 265, §4; am L 2014, c 168, §2]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§171-18 Public land trust.** All funds derived from the sale or lease or other disposition of public lands shall be appropriated by the laws of the State; provided that all proceeds and income from the sale, lease, or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and returned to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 6), and all proceeds and income from the sale, lease or other disposition of lands retained by the United States under sections 5(c) and 5(d) of the Act and later conveyed to the State under section 5(e) shall be held as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use. [L 1962, c 32, pt of §2; Supp, §103A-18; HRS §171-18]

Cross References

Act of March 18, 1959 is the Hawaii Admission Act, see volume 1.

Attorney General Opinions

Provides that ceded or public trust land may be alienated.
Att. Gen. Op. 95-3.

Law Journals and Reviews

Hawaii's Ceded Lands, Comment, 3 UH L. Rev. 101.

" **§171-18.5 Sugarcane lands conveyed for the development of housing projects.** (a) This section applies to the amount to which the department of Hawaiian home lands is entitled pursuant to article XII, section 1 of the state constitution, from land as designated in subsection (e) previously cultivated as sugarcane land under any provision of law that is conveyed by the department to the Hawaii housing finance and development corporation for the development of housing projects as defined under section 201H-1. The amount to which the department of Hawaiian home lands is entitled shall be determined by multiplying the fair market value of the land by thirty per cent. For the purpose of this section:

"Fair market value" means the amount of money that a purchaser willing but not obliged to buy the land would pay to an owner willing but not obliged to sell it, taking into consideration the highest and best use of the land.

"Highest and best use" means the most profitable, probable, and legal use to which the land can be put.

(b) Fair market value shall be determined on a per acre basis pursuant to appraisals performed in conformance with the uniform standards of professional appraisal practice as adopted by the department of commerce and consumer affairs, not more than ninety days before the conveyance of the land to the Hawaii housing finance and development corporation. The appraisals shall be performed by two disinterested appraisers each of whose services shall be contracted by the department and the department of Hawaiian home lands, respectively. If the land is sugarcane lands and of the public land trust, as defined in section 10-2, the department of Hawaiian home lands and the office of Hawaiian affairs shall contract the services of one appraiser. The parties shall contract the services of the two appraisers within thirty days after the department gives written notice to the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is sugarcane lands and of the public land trust, of the proposed conveyance of the land to the Hawaii housing finance and development corporation.

If any party fails or refuses to contract the services of an appraiser, then the other party may petition the circuit court in the county where the land is located to appoint the other of the two appraisers. If the two appraisers are unable

to agree on a fair market value, then within thirty days thereafter, the department and the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is sugarcane lands and of the public land trust, shall contract for the services of a mutually agreed upon third appraiser and the decision of the majority of the appraisers shall be final with respect to determination of the fair market value of the land. If the department and the department of Hawaiian home lands, together with the office of Hawaiian affairs if the land is sugarcane lands and of the public land trust, are unable to agree on the selection of the third appraiser, any party may petition the circuit court in the county where the land is located to appoint the third appraiser.

(c) The amount due to the department of Hawaiian home lands shall be due and payable by the State on the date of conveyance of the land to the Hawaii housing finance and development corporation. Payment to the department of Hawaiian home lands may be in the form of public lands or moneys. If payment is to be made in the form of public lands, the lands shall be mutually agreed upon by the department of land and natural resources and the department of Hawaiian home lands, and shall be of value comparable to the amount due to the department of Hawaiian home lands. Any monetary payment shall be an obligation of the Hawaii housing finance and development corporation. Any portion of that amount that is not paid on the date of conveyance shall be subject to simple interest annually, established pursuant to the fifteen year treasury rate at the time of the conveyance and payable annually by the State to the department of Hawaiian home lands.

(d) Thirty per cent of the revenue received by the Hawaii housing finance and development corporation from commercial, industrial, or other nonresidential use of the land shall be paid annually to the department of Hawaiian home lands; provided that:

- (1) The department of Hawaiian home lands shall not receive payment under this subsection until the Hawaii housing finance and development corporation recovers all moneys previously paid to the department of Hawaiian home lands for that portion of land used for commercial, industrial, or other nonresidential purposes;
- (2) If borrowed moneys are used to finance the development of land for commercial, industrial, or other nonresidential purposes, annual payments due to the department of Hawaiian home lands under this subsection shall be made pursuant to the following order of priority:

- (A) The Hawaii housing finance and development corporation satisfies as a first priority the amount computed annually on the pro rata portion (not the total debt service over the life of the debt) of its total debt service on the borrowed moneys;
 - (B) The Hawaii housing finance and development corporation satisfies as a second priority its operating expense obligations directly incurred from the development and operating of land used for commercial, industrial, or other nonresidential purposes in an amount not exceeding one per cent of revenues; and
 - (C) After the first and second priorities are satisfied, the Hawaii housing finance and development corporation shall make annual payments due to the department of Hawaiian home lands under this subsection from any remaining revenues; and
- (3) In the event of a sale of land used for commercial, industrial, or other nonresidential purposes, the department of Hawaiian home lands shall receive thirty per cent of the revenue received by the Hawaii housing finance and development corporation.

(e) This section shall only apply to the Hawaii housing finance and development corporation's developments known as the villages of Leali'i, Maui, and villages of La'i'opua, Hawaii. [L 1992, c 317, §1; am L 1997, c 350, §§14, 15; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2007, c 249, §12]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§171-19 Special land and development fund.** (a) There is created in the department a special fund to be designated as the "special land and development fund". Subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959, all proceeds of sale of public lands, including interest on deferred payments; all moneys collected under section 171-58 for mineral and water rights; all rents from leases, licenses, and permits derived from public lands; all moneys collected from lessees of public lands within industrial parks; all fees, fines, and other administrative charges collected under this chapter and chapter 183C; a portion of the highway fuel tax collected under chapter 243; all moneys

collected by the department for the commercial use of public trails and trail accesses under the jurisdiction of the department; transient accommodations tax revenues collected pursuant to section 237D-6.5(b) (5); and private contributions for the management, maintenance, and development of trails and accesses shall be set apart in the fund and shall be used only as authorized by the legislature for the following purposes:

- (1) To reimburse the general fund of the State for advances made that are required to be reimbursed from the proceeds derived from sales, leases, licenses, or permits of public lands;
- (2) For the planning, development, management, operations, or maintenance of all lands and improvements under the control and management of the board pursuant to title 12, including but not limited to permanent or temporary staff positions who may be appointed without regard to chapter 76; provided that transient accommodations tax revenues allocated to the fund shall be expended as provided in section 237D-6.5(b) (5);
- (3) To repurchase any land, including improvements, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
- (4) For the payment of all appraisal fees; provided that all fees reimbursed to the board shall be deposited in the fund;
- (5) For the payment of publication notices as required under this chapter; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules adopted by the board;
- (6) For the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department;
- (7) For the payment to private land developers who have contracted with the board for development of public lands under section 171-60;
- (8) For the payment of debt service on revenue bonds issued by the department, and the establishment of debt service and other reserves deemed necessary by the board;
- (9) To reimburse the general fund for debt service on general obligation bonds issued to finance departmental projects, where the bonds are designated to be reimbursed from the special land and development fund;

- (10) For the protection, planning, management, and regulation of water resources under chapter 174C; and
- (11) For other purposes of this chapter.

(b) Notwithstanding the above provisions, but subject to the restrictions contained in section 5(f) of the Admission Act, whenever the board sells remnants to abutting owners, the proceeds therefrom including interest on deferred payments, shall be deposited into the general fund; provided that such proceeds shall be set apart to the appropriate fund where mandatory federal requirements affecting federal funds so require.

(c) Notwithstanding the above limitations on use of the proceeds of sale, where the board sells public lands including the buildings thereon once used but no longer necessary for school purposes at the recommendation and request of the board of education, all net proceeds derived from the sales shall be used for the acquisition of land or for the erection of buildings for school purposes to the extent of an approved building plan in the departmental school district wherein the sales occur. In the absence of any school building program in the district or in the event of any surplus remaining after the completion of buildings constructed pursuant to the approved plan then the proceeds or surplus shall be used in other departmental school districts in the county wherein the sales occur.

(d) When use of the fund is authorized by the legislature for the development of public lands for a particular project, to be disposed of by sale, lease, license, or permit, the board may pay from the fund the costs of the development, including the costs of surveys, construction of roads, water lines, sewer lines, and such other improvements as may be necessary for the development of the lands; provided that the project shall meet with the zoning and subdivision requirements of the appropriate county government in which the lands are located, except that plans and specifications for recreational projects, including access roads therefor, shall not be required to meet with such approval; and provided further that no such development of public lands for disposal by sale, lease, license, or permit shall be made unless appropriate roads, water lines, and other improvements are installed which will make the land usable for the purpose for which it is being disposed at the time of disposition.

(e) All unexpended and unencumbered moneys remaining on balance with the fund at the close of each fiscal year which are deemed, by the director of finance, to be in excess of the moneys necessary to carry out the purposes of this section over the next following fiscal year shall lapse to the credit of the

state general fund. [L 1962, c 32, pt of §2; am L 1963, c 29, §1; am L 1964, c 35, §2 and c 49, §1; am L 1965, c 239, §40; Supp, §103A-19; am L 1967, c 234, §5; HRS §171-19; am L 1970, c 83, §1; am L 1976, c 50, §1; am L 1981, c 82, §17; am L 1985, c 40, §1; am L 1988, c 361, §3; am L 1989, c 25, §1; am L 1993, c 280, §53; am L 1997, c 106, §1; am L 1999, c 160, §16; am L 2000, c 122, §1, c 203, §1, and c 253, §150; am L 2003, c 113, §1; am L 2010, c 209, §§2, 5; am L 2015, c 117, §2 and c 121, §5]

Note

The amendment to subsection (a) by L 2015, c 117, §2, effective July 1, 2016, was also made by L 2015, c 121, §5, effective June 12, 2015. L 2015, c 117, §§2, 11 and c 121, §§5, 17.

" **§171-19.5 REPEALED.** L 2014, c 132, §3.

" **§171-20 Notice of breach or default.** Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction, or condition of any lease or patent heretofore or hereafter issued under this chapter, the board of land and natural resources shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease or patent making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease or patent heretofore or hereafter issued under this chapter, the written notice shall include a demand upon the party to cure the breach within less than sixty days, but not less than five business days, after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided herein or within such additional period as the board may allow for good cause, the board may, subject to section 171-21 exercise such rights as it may have at law or as set forth in the lease or patent. [L 1962, c 32, pt of §2; am L 1965, c 239, §11; Supp, §103A-20; HRS §171-20; am L 1981, c 160, §1; am L 1991, c 185, §1]

Case Notes

Sufficiency of notice. 2 H. App. 118, 627 P.2d 284.

" **§171-21 Rights of holder of security interest.** Whenever any notice of breach or default is given to any party under section 171-20, or under the terms of any lease, patent, license, agreement, or other instrument issued or to be issued under this chapter, a copy of the notice shall be delivered by the board of land and natural resources to all holders of record of any security interest in the land or interest covered by the lease, patent, license, agreement, or other instrument whose security interest has been recorded with the board. Should the board seek to forfeit the privilege, interest, or estate created by the lease, license, agreement, patent, or other instrument, each holder may, at its option, cure or remedy the breach or default, if the same can be cured or remedied, by the payment of money or, if such is not the case, by performing or undertake in writing to perform all the terms, covenants, restrictions, or conditions of any lease, patent, license, agreement, or other instrument capable of performance by the holder, as determined by the board, within the time period provided in section 171-20 or within such additional period as the board may allow for good cause and add the cost thereof to the mortgage debt and the lien of the mortgage. Any lease, patent, license, agreement, or other instrument transferred pursuant to this section shall not be subject to the requirements in section 171-14. Upon failure of the holder to exercise its option, the board may:

- (1) Pay to the holder from any moneys at its disposal, including the special land and development fund, which is made available for that purpose, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder, or if ownership of the interest or estate shall then have vested in the holder by way of foreclosure or action in lieu thereof the board shall be entitled to a conveyance of the interest or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or
- (2) If the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and use its best efforts to redispense of the affected land to a qualified and responsible person free and

clear of the mortgage and the debt thereby secured; provided that a reasonable delay by the board in instituting or prosecuting any right or remedy it may have under this section shall not operate as a waiver of the right or to deprive it of the remedy when it may still hope otherwise to resolve the problems created by the breach or default involved.

Section 171-19 to the contrary notwithstanding, the proceeds of any disposition under paragraph (2) shall be applied: first, to reimburse the board for costs and expenses in connection with the disposition; second, to discharge in full any unpaid purchase price or other indebtedness owing the State in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent of the value received by the State upon disposition which exceeds the fair market lease value of the land as previously determined by the State's appraiser; and fourth, to the owner of the privilege, interest, or estate. Nothing contained in this section shall be construed in a manner as to infringe upon or prejudice in any way the rights of a holder of record having a security interest which shall have vested prior to the effective date hereof, and to the extent that this section and section 171-98 shall or may conflict and adversely affect such interests, the same shall be of no force and effect. [L 1962, c 32, pt of §2; am L 1963, c 193, §65; am L 1965, c 239, §12; Supp, §103A-21; am L 1967, c 234, §6; HRS §171-21; am L 1981, c 160, §2; am L 1986, c 215, §2; am L 1999, c 160, §20]

Case Notes

Person seeking to enforce mechanic's lien is not within term "holder of record of any security interest". 51 H. 87, 451 P.2d 809.

" **§171-22 Consent to mortgage.** Whenever under this chapter or under any lease, license, permit, or other instrument issued by the board of land and natural resources, consent of the State is required as a condition precedent to the mortgage of, or the creation of a security interest in public land, the chairperson of the board may, upon due application, grant the consent, and if the mortgage or security interest is to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States, the consent may extend to foreclosure and sale at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under this chapter to lease, own, or otherwise acquire and hold the land or any

interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" includes an insurer or guarantor of the obligation or condition of the mortgage, including the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, the United States Department of Agriculture, or any other federal agency and their respective successors and assigns, or any lending institution authorized to do business in the State or elsewhere in the United States; provided that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

Notwithstanding any provision in this chapter to the contrary, in leases or sales for residential purposes, the board may waive or modify any restrictions of the lease or sale or any restrictions contained in any such lease or sale if the waiver or modification is necessary to enable any of the aforementioned federal agencies or any lending institution authorized to do business in the State or elsewhere in the United States to participate in any loan secured by a mortgage on the land or the leasehold interest; provided any such waiver or modification shall not confer any greater rights or powers in the holder than those which would be required by the Federal Housing Administration or the United States Department of Agriculture. [L 1962, c 32, pt of §2; am L 1963, c 189, §1; am L 1965, c 239, §13; Supp, §103A-22; HRS §171-22; am L 1985, c 50, §1; ree L 1986, c 252, §1; am L 1997, c 258, §5]

" **§171-23 Land patents and deeds, issued when.** Except as otherwise provided, a land patent or a deed shall issue under the seal of the department of land and natural resources to the purchaser in fee simple of any public land or other land disposable by the board of land and natural resources or to any holder of an award from the board [of] commissioners to quiet titles upon payment of the commutation, if any, required under sections 172-1 to 172-6 and upon presentation of satisfactory proof by the claimant to the lands covered by the award of sufficient right, title, and interest to the awarded land. [L 1962, c 32, pt of §2; Supp, §103A-23; HRS §171-23]

" **§171-24 Land conveyances, preparation, signing, record, copies.** Except for the preparation and execution of leases and licenses and the issuance of revocable permits and rights of entry by the department of transportation, in its harbor and airport functions, all land patents, deeds, leases, grants, or other conveyances of any public land or any interest therein,

shall be prepared by the department of land and natural resources. The department of transportation shall, within thirty days after the execution or issuance of such documents, file or record as directed by the board of land and natural resources the original of the same with the board.

Documents setting aside lands for public purposes or withdrawing the same shall be signed by the governor. All other documents prepared by the department of land and natural resources shall be signed by its chairperson or any authorized employee.

The board shall keep a complete record of all such documents. The record shall be open to public inspection and the board shall furnish a certified copy, under its official seal, of any document to any person applying therefor, upon payment of reasonable charges set by the board for certified copies. [L 1962, c 32, pt of §2; am L 1965, c 239, §3; Supp, §103A-24; HRS §171-24; am L 1989, c 145, §1]

Cross References

Reservation of mineral rights, see chapter 182.

Case Notes

Lease let at public auction is not subject to reformation. 47 H. 28, 384 P.2d 581.

" **§171-25 Irrigation projects.** In any patent, agreement, or lease a condition may be provided requiring the inclusion of the land being disposed in any irrigation project formed or to be formed by the state agency responsible therefor and making the land subject to assessments made or to be made for such project and constituting such assessments a first lien upon the land which if not paid shall result in the forfeiture of the land subject to notice of default as provided in section 171-20. [L 1962, c 32, pt of §2; Supp, §103A-25; HRS §171-25]

Cross References

Assessments and liens, see §174-19.

" **§171-26 Rights-of-way to the sea, game management areas, and public hunting areas.** Prior to the disposition of any public lands, the board of land and natural resources shall lay out and establish over and across such lands a reasonable number of rights-of-way from established highways to the public beaches, game management areas, public hunting areas, and public

forests and forest reserves in order that the right of the people to utilize the public beaches, game management areas, public hunting areas, and public forests and forest reserves shall be protected.

Prior to the leasing of any lands, the board shall determine the feasibility of hunting on such lands, and if any of them is suitable for hunting or may during the term of the lease become suitable for hunting, the board may reserve such lands as game management areas or public hunting areas. Where the board finds that hunting on such lands would not be consistent with the rights of the lessee or for other good cause, the board need not reserve such lands as game management areas or public hunting areas.

The cost of such rights-of-way and any fencing which may be required shall be borne by the State, lessee or jointly as the board may deem appropriate prior to the leasing of such lands. [L 1962, c 32, pt of §2; am L 1965, c 239, §14; Supp, §103A-26; HRS §171-26; am L 1970, c 83, §2; am L 1981, c 116, §5]

Cross References

Fish and game, generally, see chapters 183D and 187A to 190.

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ 65.

Public Beach Access: A Right for All? Opening the Gate to Iroquois Point Beach. 30 UH L. Rev. 495.

Case Notes

Claim for relief against state officials based on alleged illegality of exchange of ceded lands was barred by State's sovereign immunity. 73 H. 578, 837 P.2d 1247.

" **§171-27 Taxes.** Any provision to the contrary notwithstanding, leases and licenses issued by the board of land and natural resources and permits issued to permittees, who are holdover lessees or licensees, shall be subject to real property taxes which shall be assessed on a pro rata basis against the lessee, licensee or the permittee and the lessee's, licensee's or permittee's successor in interest.

The board shall notify the lessee, licensee, or permittee and each holder of record having a security interest as provided in section 171-21 of any default in the payment of the taxes and upon failure to remedy the default within sixty days after receipt of notice of default, the board shall cancel and

terminate the lease, license, or permit without prejudice to any other remedies the State may have against the lessee, licensee, or permittee. [L 1962, c 32, pt of §2; Supp, §103A-27; am L 1967, c 234, §7; HRS §171-27; gen ch 1985]

" **§171-28 Government-owned Hawaiian fishponds; sale prohibition.** (a) The board may investigate and develop scientific commercial management practices for government-owned Hawaiian fishponds and reconstruct, rehabilitate, improve, and stock the fishponds; and expend moneys from the special land and development fund. All revenues derived from any government-owned Hawaiian fishpond shall be deposited in the fund.

(b) The board may lease government-owned Hawaiian fishponds with legislative authorization as provided under section 171-53(c); provided that in lieu of legislative authorization, the board may lease such fishponds if:

- (1) A public hearing is conducted on the proposed lease on the island where the fishpond is located;
- (2) The board finds that the proposed lease does not cause a substantial adverse environmental or ecological impact on the fishpond or surrounding area; and
- (3) The proposed lease is not in violation of applicable federal, state, or county laws.

(c) Any law to the contrary notwithstanding, the board may not sell the fee interest in public lands on which government-owned Hawaiian fishponds are located. [L 1962, c 32, pt of §2; Supp, §103A-28; HRS §171-28; am L 1994, c 69, §1; am L 2010, c 210, §1]

" **§171-29 Report to legislature on all dispositions.** (a) The board of land and natural resources shall submit a written report annually to the legislature within ten days of the convening of each regular session, of all land dispositions made in the preceding year, including sales, leases, leases with options to purchase, licenses, concessions, permits, exchanges, and setting aside of lands by executive orders, the persons to whom made, the size of each disposition, the purpose for which made, the land classification of each, the tax map key number, the per unit price paid or set, and whether the disposition was by auction, by drawing, or by negotiation. When land originally leased by the board is, in turn, subleased by the board's lessee or sublessee, the report shall include, in addition to the foregoing information, the reason for approval of the sublease by the board and the estimated net economic result accruing to the State, lessee and sublessee.

(b) Whenever in this chapter any sale, lease, easement, license, executive order, quitclaim, exchange, or other

disposition is made subject to disapproval of the legislature, a written report thereof containing the information required in subsection (a) of this section shall be submitted to the legislature in the session next following the date of the disposition within ten days of the convening of the session. [L 1962, c 32, pt of §2; Supp, §103A-29; am L 1967, c 234, §8; HRS §171-29; am L 1972, c 173, §2]

" **§171-30 Acquisition of real property; general.** (a) The board of land and natural resources shall have the exclusive responsibility, except as provided herein, of acquiring, including by way of dedications:

- (1) All real property or any interest therein and the improvements thereon, if any, required by the State for public purposes, including real property together with improvements, if any, in excess of that needed for such public use in cases where small remnants would otherwise be left or where other justifiable cause necessitates the acquisition to protect and preserve the contemplated improvements, or public policy demands the acquisition in connection with such improvements.
- (2) Encumbrances, in the form of leases, licenses, or otherwise on public lands, needed by any state department or agency for public purposes or for the disposition for houselots or for economic development.

The board shall upon the request of and with the funds from the state department or agency effectuate all acquisitions as provided under this section.

The acceptance by the territorial legislature or the legislature of a dedication of land in the Kakaako community development district by a private owner is sufficient to convey title to the State.

(b) Except as provided in subsection (c), the department of accounting and general services shall be responsible for the acquisition of any office space in a nonstate owned building for use by a state department or agency.

(c) A state department or agency may directly acquire such real property for its purposes whenever the acquisition by the department or agency is required to conform to mandatory requirements of the United States in the case where federal funds are furnished to the department or agency.

(d) Property which may be acquired under this section includes all real property together with all structures and improvements thereon, franchises or appurtenances thereunto belonging, water, water rights, easements, and interests in land of every nature.

(e) The appraisal of private property to be acquired by the State may be performed by not more than three disinterested appraisers whose services shall be contracted for by the State, and no land shall be purchased for a sum greater than the highest value fixed by the appraiser or appraisals; provided that the State, after review of the appraisals by the appraiser or appraisers or the attorney general, may purchase the property at a value greater than the highest value if the higher value is determined by the appraiser or appraisers or the attorney general to be justified and within the range of market value; provided further that this limitation shall not apply where acquisition is by condemnation. After the private property has been acquired or the State abandons the acquisition, these appraisal reports shall be available for inspection and copying by the public. [L 1962, c 32, pt of §2; am L 1965, c 239, §15; Supp, §103A-30; HRS §171-30; am L 1989, c 49, §1; am L 1993, c 132, §2; am L 2016, c 232, §1]

Case Notes

Compromise agreement resolving legal disputes between board and private party is not binding without approval of attorney general. 57 H. 259, 554 P.2d 761.

" **§171-31 Depository for documents; filing, record.** The department of land and natural resources is designated as a depository for purpose of recordation with the registrar of conveyances, all documents pertaining to real property or any interest therein conveyed to the Territory or State or to any political subdivision thereof.

The officer in charge of any department of the State or any department of any political subdivision thereof, who is authorized to negotiate for the acquisition of real property or any interests therein shall within thirty days after the execution of the necessary documents involved, file all the documents pertaining to the real property or any interest therein with the department. Two blueprint plans of the real property shall also be filed with the department.

All such documents shall be offered for record by direction of the board of land and natural resources and recorded by the registrar of conveyances free of charge. [L 1962, c 32, pt of §2; Supp, §103A-31; HRS §171-31]

" **§171-31.5 Disposition of abandoned or seized property.**

(a) The department may sell, donate, or otherwise dispose of property abandoned or seized on land owned by the State upon compliance with the requirements of this section.

(b) The department shall send notice by certified mail, at least thirty days prior to disposition of the abandoned or seized property, to the address of the owner of the property abandoned or seized if the owner is known or can be determined. The notice shall apprise the owner of the identity and location of the property abandoned or seized and of the intent of the department to sell, donate, or otherwise dispose of the property. Where the identity or the address of the owner is unknown or cannot be determined, the notice shall be posted on the premises where the property was abandoned or seized.

(c) If the abandoned or seized property has an estimated value of \$1,000 or more, the department shall also give public notice of the disposition at least once either statewide or in a publication of local circulation where the property was abandoned or seized; provided that the disposition shall not take place less than five days after the notice of intent to dispose of the property.

(d) The sale of abandoned or seized property having an estimated value of \$1,000 or more shall be by public auction through oral tenders in the county where the property was abandoned or seized. Where no bid is received, the property may be sold by negotiation, disposed of or sold as junk, kept by the department, or donated to any other government agency or a charitable organization.

(e) Any person entitled to the abandoned or seized property may repossess the property prior to its disposition upon proof of entitlement and payment of all unpaid rent, debts, charges, and fines owing and all handling, storage, appraisal, advertising, and any other expenses incurred in connection with the proposed disposition of the abandoned or seized property.

(f) The requirement of public notice and public auction pursuant to subsections (c) and (d) shall not apply when the value of the abandoned or seized property is less than \$1,000. In that event, the property may be sold by negotiation, disposed of or sold as junk, kept by the department, or donated to any other government agency or a charitable organization.

(g) The proceeds of the sale of abandoned or seized property, after deduction of all charges and fines and all expenses of handling, storage, appraisal, advertising, and other sale expenses, shall be first offset against any amounts owed by the owner to the State. Any amount remaining shall be held in trust for the owner of the property for thirty days, after which time the proceeds shall be paid into the department's appropriate special fund or to the general fund if no special fund exists.

(h) The remedies available to the owner of abandoned or seized property are limited to those provided in subsections (e)

and (g) of this section. The State, its officers, employees, and agents shall not be liable to the owner of abandoned or seized property because of any disposition of the property made pursuant to this section.

(i) For purposes of this section, "department" includes the department of land and natural resources and any other state department or agency that manages land owned or controlled by the State. [L 1986, c 184, §1; am L 1998, c 2, §§35, 36; am L 2001, c 63, §1; am L 2002, c 16, §6]

Case Notes

Where plaintiffs alleged that defendants violated their constitutional rights to due process by depriving them of their dwelling without constitutionally adequate process, and relied almost entirely on their assertion that defendants violated this section in support of their argument that they received inadequate process, plaintiffs' reliance on this section was misplaced. 832 F. Supp. 1399.

" **[§171-31.6] Criminal penalties.** (a) Any person found guilty of a violation of this chapter or any rules adopted thereunder shall be guilty of a petty misdemeanor and shall be punished as follows:

- (1) For a first offense, by a mandatory fine of not less than \$500, or imprisonment of not more than thirty days, or both;
- (2) For a second offense within five years of a previous conviction under this section, by a mandatory fine of not less than \$1,000, or imprisonment of not more than thirty days, or both; and
- (3) For a third or subsequent offense within five years of two prior convictions under this section, by a mandatory fine of not less than \$2,000, or imprisonment of not more than thirty days, or both.

(b) Any criminal action against a person for any violation under this section shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against the person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rules adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person pursuant to this section. [L 2008, c 216, §1]

"PART II. DISPOSITIONS, GENERALLY

A. POLICY AND PLANNING

§171-32 Policy. Unless otherwise specifically authorized in this chapter or by subsequent legislative acts, all dispositions shall be by lease only, disposed of by public auction in accordance with the procedure set forth in sections 171-14 and 171-16. [L 1962, c 32, pt of §2; am L 1965, c 239, §4; Supp, §103A-32; HRS §171-32]

Case Notes

Rental of excess transmission capacity in facilities of Molokai irrigation system did not constitute disposition of public lands. 62 H. 546, 617 P.2d 1208.

" **§171-33 Planning; generally.** Prior to any notice of intended disposition, the board of land and natural resources shall:

- (1) Classify the land according to its use or uses as provided in this chapter;
- (2) Determine the specific use or uses for which the disposition is intended;
- (3) Parcel land into units of minimum size areas related to the intended specific use or uses and sufficient for an economic operation, hereinafter called an "economic unit";
- (4) Determine the requirements for the construction of building or other improvements, which are necessary or desirable to encourage the highest use of the land;
- (5) Determine the upset price or lease rental, based upon the fair market value of the land employed to the specific use or uses for which the disposition is being made, with due consideration for all of the terms and conditions of the disposition;
- (6) Determine the necessary conditions of disposition which will discourage speculation;
- (7) In the case of leases, determine the minimum tenure necessary to support the intended use or uses and the necessity for periodic rent openings in long-term leases to assure the State a fair return;
- (8) Prepare the proposed documents and make them available for public inspection;
- (9) Determine, two years before the expiration of the term of any lease, whether the premises are to be demised for the same use or uses under a new lease or whether all or any part thereof is to be reserved for other use or uses and then promptly notify the lessee of the

determination. [L 1962, c 32, pt of §2; am L 1965, c 239, §16; Supp, §103A-33; HRS §171-33]

Case Notes

Absent showing that lot sizes were unrelated to intended use and insufficient for economic operation, court held board did not abuse discretion in setting lot size. 60 H. 228, 588 P.2d 430.

" §171-34 Planning; intensive agricultural and pasture uses.

In addition to the requirements set forth in section 171-33, if the intended disposition is for intensive agricultural or pasture uses, the board of land and natural resources shall:

- (1) Make or cause to be made an on-the-ground inspection of the land;
- (2) Secure data or information from the land study bureau relating to such parcel;
- (3) Review any other pertinent information with respect to the land and the surrounding area; and
- (4) Based upon information obtained, prepare a written report on the land, which report shall include the following:
 - (A) The class of the land within the specific use for which disposition is intended;
 - (B) The condition of the land with respect to its state of development;
 - (C) Existing improvements, if any;
 - (D) Extent of uncontrolled erosion if any;
 - (E) Nature of forage; and
 - (F) Extent of infestation with noxious weeds. [L 1962, c 32, pt of §2; Supp, §103A-34; HRS §171-34]

Case Notes

Absent showing that lot sizes were unrelated to intended use and insufficient for economic operation, court held board did not abuse discretion in setting lot size. 60 H. 228, 588 P.2d 430.

"B. LEASES OR SALES

Cross References

Civil relief for state military forces, see chapter 657D.

Disposition of state boating facility properties, see §200-2.5.

§171-35 Lease provisions; generally. Every lease issued by the board of land and natural resources shall contain:

- (1) The specific use or uses to which the land is to be employed;
- (2) The improvements required; provided that a minimum reasonable time be allowed for the completion of the improvements;
- (3) Restrictions against alienation as set forth in section 171-36;
- (4) The rent, as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;
- (5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and
- (6) Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the state constitution and of this chapter. [L 1962, c 32, pt of §2; am L 1965, c 239, §17; Supp, §103A-35; HRS §171-35; am L 1981, c 116, §6; am L 1989, c 253, §1]

Attorney General Opinions

Land board may require compliance with county ordinances except planning and zoning laws. Att. Gen. Op. 86-3.

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ 65.

Case Notes

Cited: 53 H. 567, 498 P.2d 631.

" **§171-36 Lease restrictions; generally.** (a) Except as otherwise provided, the following restrictions shall apply to all leases:

- (1) Options for renewal of terms are prohibited;

- (2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration requirements; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;
- (3) No lease shall be made for any land under a lease which has more than two years to run;
- (4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county;
- (5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;
- (6) The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if

necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward;

- (7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise;
- (8) Mineral and metallic rights and surface and ground water shall be reserved to the State; and
- (9) No lease of public lands, including submerged lands, nor any extension of any such lease, shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for such purposes, unless such lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, which indicates the public's right to the use of the pier. The board, at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph. The term "lease", for the purposes of this paragraph, includes month-to-month rental agreements and similar tenancies.

(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may:

- (1) Modify or eliminate any of the restrictions specified in subsection (a);
- (2) Extend or modify the fixed rental period of the lease; provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years; or
- (3) Extend the term of the lease,

to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing, such extension being based on the economic life of the improvements as determined by the board or an independent appraiser; provided that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;
- (3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening;
- (4) Any federal or private lending institution shall be qualified to do business in the State;
- (5) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;
- (6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled; and
- (7) The rules of the board, setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.

(c) The board at any time during the term of any intensive agricultural, aquaculture, or mariculture lease and when justified by sound economic practices or other circumstances, may permit an alternative agricultural, aquaculture, or mariculture use or uses for any portion or portions of the land demised. As a condition to permitting alternative uses, the board may require such other modifications, including rental adjustments or changes in the lease as may be necessary to effect or accommodate the alternative use or uses. An alternative use or uses may be allowed by the board upon:

- (1) The application of the lessee;
- (2) Consent of each holder of record having a security interest in the leasehold; and
- (3) A finding by the board that the alternative use or uses are in the public interest.

(d) The board, from time to time, during the term of any agriculture, intensive agriculture, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may modify or eliminate any of the [restrictions] specified in subsection (a), extend or modify the fixed rental period of the lease, or extend the term of the lease upon a showing of significant economic hardship directly caused by:

- (1) State disaster, pursuant to chapter 209, including seismic or tidal wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or severe drought; or
- (2) A taking of a portion of the area of the lease by government action by eminent domain, withdrawal, or

conservation easement; provided that the portion taken shall not be less than ten per cent of the entire leased area unless otherwise approved by the board; and provided that the board determines that the lessee will not be adequately compensated pursuant to the lease provisions.

(e) The approval of any extension granted pursuant to subsection (d) shall be subject to the following:

- (1) The demised premises has been used substantially for the purposes for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) The rental shall not be less than the rental for the preceding term;
- (4) The rules of the board, setting forth any additional terms and conditions which shall ensure and promote the purposes of the demised lands; and
- (5) The length of the extension shall not exceed a reasonable length of time for the purpose of providing relief and shall in no case exceed five years. [L 1962, c 32, pt of §2; am L 1965, c 239, §18; Supp, §103A-36; am L 1967, c 234, §14; HRS §171-36; am L 1969, c 217, §1; am L 1971, c 19, §1 and c 38, §1; am L 1976, c 196, §1; am L 1978, c 191, §1; am L 1982, c 37, §1 and c 55, §1; am L 1988, c 159, §2; am L 1989, c 104, §1; am L 1990, c 242, §1; am L 1992, c 283, §1; am L 1994, c 114, §1; am L 1997, c 67, §1, c 206, §1, c 258, §6, and c 286, §1; am L 1999, c 160, §21; am L 2000, c 261, §§2, 5; am L 2002, c 68, §2, c 103, §1, and c 180, §1; am L 2005, c 129, §2; am L 2011, c 207, §1]

Cross References

Mineral rights and leases, see chapter 182.

" **[§171-36.1] Reservation of rights to prehistoric and historic remains on leased public lands.** The board of land and natural resources shall, in leases of public lands retain the rights to all prehistoric and historic remains found on such lands. [L 1969, c 216, §7]

" **§171-36.2 Public lands for historic preservation and restoration.** (a) Any law to the contrary notwithstanding, the board may lease public lands in the State for use in historic preservation and restoration projects:

- (1) Through negotiations; and

(2) For a price which shall be determined by the board.

(b) The department shall adopt rules pursuant to chapter 91 to determine what constitutes historic preservation and restoration projects for the purposes of this section; provided that no definition or criteria established shall conflict with any federal, state, or county law.

(c) All subleases of land disposed of pursuant to this section shall be subject to the approval of the board. [L 1985, c 33, §2; am L 2002, c 114, §1]

" **§171-37 Lease restrictions; intensive agricultural and pasture uses.** In addition to the restrictions provided in section 171-36, the following restrictions shall apply to all leases for intensive agricultural and pasture uses:

- (1) The lease term shall not be less than fifteen years nor more than thirty-five years, except that if the type of disposition requires the lessee to occupy the premises as the lessee's own personal residence, the lease term may be longer than thirty-five years; provided that the lease term shall not be in excess of seventy-five years, except that in the case of a tree-crop orchard lease, the term shall not be in excess of forty-five years;
- (2) If the land being leased is not immediately productive and requires extensive expenditures for clearing, conditioning of the soil, the securing of water, the planting of grasses, or the construction of improvements, as the result of which a longer term is necessary to amortize the lessee's investment, then the lease term may be longer than thirty-five years, but not in excess of fifty-five years; and
- (3) The land leased hereunder, or any portion thereof, shall be subject to withdrawal by the board at any time during the term of the lease with reasonable notice and compensation, as provided in section 171-37.5, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights-of-way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock, or gravel as may be necessary for the construction of roads and rights-of-way within or without the demised premises.

"Tree-crop", as used in this section, shall be exclusive of papaya and banana. [L 1962, c 32, pt of §2; am L 1965, c 239, §19; Supp, §103A-37; am L 1967, c 234, §15; HRS §171-37; am L

1973, c 68, §1; am L 1982, c 198, §1; gen ch 1985; am L 1987, c 88, §1; am L 2013, c 234, §3]

" **[\$171-37.5] Withdrawal or taking of leased land; fair compensation.** (a) Upon a withdrawal or taking of leased land pursuant to section 171-37(3) that causes any portion of the land to become unusable for the specific use or uses for which it was leased, the lease rent shall be reduced in proportion to the value of the land withdrawn or made unusable; provided that if any permanent improvement made to or constructed upon the land by the lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid to the lessee based upon the unexpired term of the lease. No land that is under cultivation shall be withdrawn or taken until the crops are harvested, unless the board pays the lessee the value of the crops.

Upon a withdrawal, any person with a long-term lease shall be compensated for the present value of all permanent improvements in place at the time of the withdrawal that were legally made to or constructed upon the land by the lessee of the leased land being withdrawn.

In the case of tree-crops, as defined in section 171-37, the board shall pay to the lessee the residual value of the trees taken and, if there are unharvested crops, the value of the crops.

In the case of breeding livestock that cannot be relocated or marketed for the breeding value, the board shall pay to the lessee the difference between the appraised breeding value and the salvage value, including the cost of transportation to a market on the island on which the leased land is located. If there is disagreement between the board and the lessee as to the number of breeding livestock that cannot be relocated or marketed for breeding value, the issue shall be submitted to the department of agriculture to make a determination, which shall be final. The appraised breeding value shall be the fair market value of the livestock, as opposed to net present value, at the time the board approves the withdrawal or taking of a portion or all of the leased land. The fair market value shall be determined by:

- (1) An employee of the department of agriculture qualified to appraise livestock; or
- (2) A disinterested livestock appraiser whose services shall be contracted for by the board,

and the lessee shall be promptly notified of the determination; provided that should the lessee fail to agree upon the fair market value, the lessee may appoint the lessee's own livestock appraiser who together with the board's appraiser shall appoint

a third appraiser and the fair market value shall be determined by arbitration as provided in chapter 658A. The lessee shall pay for the lessee's own livestock appraiser, the board shall pay for the board's livestock appraiser, and the cost of the third livestock appraiser shall be borne equally by the lessee and the board. Whenever more than one livestock appraiser is appointed, each shall prepare and submit an independent appraisal report.

(b) In addition to compensation received under subsection (a) or section 171-38, a lessee shall be entitled to compensation for costs attributable to the diminished use of the leased land, including reimbursement for the cost of any insurance required by the board to be maintained, or property tax paid, by the lessee on the portion of the leased land withdrawn or taken; provided that a lessee of land subject to easements shall be entitled to compensation under this subsection only if the easements are placed upon the land subsequent to the original lease and prevent the lessee from using the land for the original intended use. [L 2013, c 234, §2]

" **§171-38 Condemnation of leases.** The lease shall provide that whenever a portion of the public land under lease is condemned for public purposes by the State, or any county or city and county, or any other governmental agency or subdivision, the rental shall be reduced in proportion to the value of the portion of the premises condemned, and the lessee shall be entitled to receive from the condemning authority the:

- (1) Value of growing crops, if any, that the lessee is not permitted to harvest; and
- (2) Proportionate value of the lessee's permanent improvements taken in the proportion that it bears to the unexpired term of the lease.

The lessee, in the alternative, may remove and relocate the lessee's improvements to the remainder of the lands occupied by the lessee. The foregoing rights of the lessee shall not be exclusive of any other to which the lessee may be entitled by law, including those rights established in section 171-37.5. Where the portion taken renders the remainder unsuitable for the uses for which the land was leased, the lessee shall have the option to surrender the lessee's lease and be discharged for any further liability therefor; provided that the lessee may remove the lessee's permanent improvements within a reasonable period allowed by the board. [L 1962, c 32, pt of §2; Supp, §103A-38; HRS §171-38; gen ch 1985; am L 2013, c 234, §4]

" **§171-39 Leases; forfeiture.** Upon the violation of any condition or term of any lease to be observed or performed by the lessee or tenant, the board of land and natural resources shall, after the notice of default as provided in section 171-20, and subject to the rights of each holder of record having a security interest as provided in section 171-21, terminate the lease or tenancy and take possession of the leased land, without demand or previous entry and without legal process, together with all improvements placed thereon and shall retain all rent paid in advance as damages for the violations. [L 1962, c 32, pt of §2; Supp, §103A-39; HRS §171-39]

" **§171-40 Expired leases; holdover.** Upon expiration of the lease term, if the leased land is not otherwise disposed of, the board of land and natural resources may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the board may prescribe; provided that if, immediately prior to the expiration of the lease, the land was cultivated with crops having ratoons for at least one cycle, as defined hereinafter, the board may permit the lessee to continue to hold the leased land until the crops from the last remaining cycle have been harvested. The term "cycle" as used in this section means the period required to plant and cultivate the original crop, including the harvesting of the first ratoon, being a period exceeding two years.

Upon expiration of the one-year extension, if the board has not yet decided upon the re-lease of the land or reservation for other purposes, the board may issue a temporary permit to the lessee, subject to section 171-55 and the rent and such other terms and conditions as the board may prescribe. [L 1962, c 32, pt of §2; Supp, §103A-40; HRS §171-40]

" **§171-41 Commercial, industrial, and other business uses.**
(a) Leases for commercial, industrial, and other business uses shall be made only pursuant to a development plan which provides for careful placement of complementary enterprises consistent with county zoning requirements; except that development plans for leases of parcels in industrial parks developed under section 171-134(b) shall provide for careful placement of complementary enterprises consistent with the final plans and specifications under section 171-134(b). Where a disposition for any such use is made without advance parcelization, the board shall make adequate provisions for the compatibility of the proposed enterprises with any existing surrounding private developments. The board, wherever possible, shall control the landscaping and architecture of the enterprises and protect the

public against the creation of nuisances of smoke, soot, irritating odors and gases, and harmful wastes.

(b) The board may sell public land in fee simple for commercial, industrial, or other business uses with the prior approval of the governor and subject to disapproval by two-thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session next following the date of disposition; provided the above restrictions shall not apply to any sale of land initially acquired for highway purposes with participating federal funds and which land is later found to be in excess of the need for highway purposes. [L 1962, c 32, pt of §2; am L 1963, c 196, §1; am L 1965, c 239, §20; Supp, §103A-41; HRS §171-41; am L 1972, c 38, §1; am L 1988, c 361, §4]

" **§171-41.5 Amendment of commercial, hotel, or industrial lease.** (a) The board of land and natural resources, after notification and public hearing as provided in subsection (b), may amend the height, density, and other building restrictions or requirements and the specific use or uses contained in a lease for hotel, commercial, or industrial use of public land to another or an additional specific hotel, commercial, or industrial use or uses, or restriction; provided that the lease has been in effect twenty years or more, and upon:

- (1) The application of the lessee;
- (2) Consent of each holder of record having a security interest in any improvements made by the lessee to the leased public land;
- (3) A finding by not less than two-thirds of the total membership of the board that the amended use or uses or restriction is in the public interest; and
- (4) Agreement by the lessee that the lessee, commencing from the effective date of the amendment, shall pay a revised annual rent equal to the annual fair market rental value of the land based on the amendment. The annual fair market value of the land shall be determined and set by the board. Such amendments shall not be construed to permit the construction of improvements not otherwise permitted by county zoning regulations applicable to the public land.

(b) Before any amendment to a state lease, the board of land and natural resources shall give no fewer than fourteen days' public notice statewide and, in addition, in the county where the subject property is situated. A full hearing shall be given by the board of land and natural resources, to all who desire to be heard upon the subject matter of the notice. The hearing shall be public, on the island where the subject

property is situated, and shall be conducted under rules that the board may adopt. [L 1986, c 252, §2; am L 1990, c 73, §1; am L 1998, c 2, §37]

" **§171-42 Hotel and resort uses.** Public land may be leased for hotel or resort development, if the department of business, economic development, and tourism finds that the land possesses the amenities for a successful hotel and resort development and that the advantages of its placement for such use outweigh those inherent in free public use in its natural state. Where the land being disposed of for hotel or resort use is divisible into more than one economic unit, the division shall be made prior to disposition, provided that firm use controls shall be imposed to assure that the development of each unit is compatible with the others. Provisions for community operations of shopping areas, golf courses, and other similar facilities shall be encouraged, with special assessments for the maintenance of these community facilities. Where public land disposed of for hotel or resort use is adjacent to any beach, waterway, or historic monument or landmark, the disposition shall be subject to reservations of public right-of-way or public access at all times to such beach, waterway, historic monument, or landmark.

The board of land and natural resources may, with the prior approval of the governor, and subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both, in any regular session next following the date of disposition, sell in fee simple or lease with option to purchase, raw, unimproved public land for hotel and resort use; provided that:

- (1) The board first finds that the land is suitable for resort development and that its use for resort purposes will promote the economic development of the State;
- (2) The purchaser submits development plans for the area to be purchased which conform with applicable county or city and county zoning and subdivision requirements;
- (3) The board finds upon independent study of these plans that the proposed development is compatible with the developments in the area in general and consistent with good sound planning;
- (4) The purchaser agrees to construct, improve, and put in all off-site and on-site improvements as may be required by the board which may include any or all of the following--all major and minor auxiliary roads and highways as well as all local streets, all connecting water lines and mains to existing lines and mains, all

necessary sewer lines, sewage treatment, or disposal plants, all pumping stations, all reservoirs, golf courses, recreational areas, shopping centers, and all other improvements necessary to develop the raw land into an economic resort enterprise;

- (5) The purchaser agrees to complete all improvements within the time limitations set by the board;
- (6) The title to the land shall remain in the State until the purchaser has made all payments required in the terms of the sale and has constructed the improvements as agreed; provided that where the purchaser finds it necessary to secure a loan to finance the construction of the improvements the board may issue a patent or deed upon the execution in favor of the State of a performance and payment bond conditioned upon the payment of an amount equal to one hundred per cent of the improvement cost. The bond shall by its terms inure to the benefit of the State;
- (7) The board shall sell for resort uses only that portion of the public lands in the proposed resort area which it finds to be absolutely necessary to give the purchaser self-sustaining economic operations; provided that no public land shall be included in the sale for these purposes which will not actually be improved and used in the resort area for resort purposes;
- (8) The lessee with an option to purchase shall not be permitted to exercise the option until the lessee has complied with all the terms and conditions of the lease, including but not limited to the construction or erection of improvements as may be required by the board.

In any disposition under this section the board shall give consideration to the needs of the public for beach area above the high water mark.

Upon a finding by the board that the public interest demands it, the board may lease, lease with option to purchase, or sell in fee simple such public lands by negotiation; subject to the provisions contained in this section and to such other terms and conditions contained in this chapter. [L 1962, c 32, pt of §2; am L 1963, c 2, §1 and c 196, §§2, 3, 4; am L 1965, c 239, §21; Supp, §103A-42; HRS §171-42; gen ch 1985; am L 1987, c 336, §7; am L 1990, c 293, §8]

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ 65.

" **§171-43 Lease of campsites or sites for youth athletic and/or educational activities.** The board of land and natural resources may directly lease without recourse to public auction to any eleemosynary or religious organization campsites or sites for youth athletic and/or educational activities in a state park area or on lands under the control of the department of land and natural resources at nominal consideration. Where the lease is for campsites, the lease shall provide that the lessee shall permit the public to use the campsites at the rates approved by the board in its rules and regulations. Except as provided herein, the terms and conditions of sections 171-33, 171-35 and 171-36 shall apply. [L 1963, c 203, §1; am L 1965, c 239, §22; Supp, §103A-42.5; HRS §171-43; am L 1971, c 83, §1]

" **§171-43.1 Lease to eleemosynary organizations.** The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

" **§171-44 Lease for recreation-residence use.** [(a)] Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public auction, lands within a state park or forest reserve and other lands set aside under executive orders, for recreation-residence use for a period not to exceed twenty years on such terms and conditions as may be prescribed by the board.

{(b)} The [board] of land and natural resources shall enforce all provisions of recreation-residential use lease agreements and shall establish a schedule of penalties and fines for any breach of the provisions of a recreation-residential use lease agreement unless penalties and fines are specified in the lease agreement. [L 1965, c 239, §38; Supp, §103A-42.8; HRS §171-44; am L 2008, c 223, §4]

Revision Note

Subsection (b) is codified to this section pursuant to §23G-15.

Cross References

Koke'e state park advisory council, see §171-8.5.

"C. RESIDENTIAL USES

Cross References

Civil relief for state military forces, see chapter 657D.

§171-45 Residence lots; sale or leases. The board may dispose of public land for personal residence purposes (1) by sale in fee simple or lease at public auction as provided in sections 171-14 and 171-16, or (2) by sale or lease of lots by drawing as provided in sections 171-15 and 171-16. [L 1962, c 32, pt of §2; Supp, §103A-43; HRS §171-45; am L 1970, c 184, §1]

Cross References

Oahu land development, see chapter 206.

" **§171-46 Residential sales or leases; planning.** Prior to the disposition of public land for residential lots, whether by sale in fee simple or by lease, in addition to the requirements of section 171-33, the board of land and natural resources shall:

- (1) Make a determination of the demand for houselots in the area of the intended disposition;
- (2) Make a thorough investigation of the costs of the residential development;
- (3) Wherever possible locate the residential development adjacent to an existing urban center;
- (4) Subdivide and improve the land, in conformity with county or city and county zoning and subdivision requirements, including the construction of necessary roads; and
- (5) Plan the development to meet the economic need and circumstance of the persons for whom the development is intended. [L 1962, c 32, pt of §2; am L 1964, c 47, §2; am L 1965, c 239, §23; Supp, §103A-44; HRS §171-46]

" **§171-47 Residence lots; improvement districts.**

Notwithstanding any provision of law to the contrary, the board of land and natural resources is authorized, in like manner and subject to the same conditions, including the imposition of liens and the payment of costs, as any subdivider of private

lands, to petition for the construction of necessary subdivision improvements pursuant to applicable improvement district statutes or ordinances of any county or city and county in subdividing public lands for residential purposes. The board shall dispose of the residential lots so improved subject to liens consisting of the improvement assessments. For the purpose of this section the board is authorized to encumber and impose liens on public lands. [L 1965, c 239, §24; Supp, §103A-44.5; HRS §171-47]

" **§171-48 Residence lots, requirements.** In the disposition of lots for residence purposes:

- (1) No person shall purchase or lease, directly or indirectly through an agent, nominee, third person, or otherwise, any interest in more than one lot.
- (2) No person and no unmarried minor child, whose spouse or parent purchases or leases a lot, shall be qualified to purchase or lease any lot.
- (3) The board shall require the lessee or purchaser to construct, within three years after disposition, a dwelling of such size and value as shall be prescribed by the board and to use the lot and dwelling as the lessee's or purchaser's principal domicile; provided that the board may, for good and sufficient cause and to alleviate hardship, extend the building deadline for a period not exceeding two years, at six-month intervals based on a demonstration of the lessee's or purchaser's progress towards satisfying improvement requirements.
- (4) The board shall establish such additional restrictions, requirements or conditions in accordance with the powers granted to it in section 171-6(6).
- (5) No person shall be qualified to purchase or lease any lot by drawing if the person's gross income including the gross income of the person's spouse exceeds \$20,000 per year. In determining gross income, the standard income tax exemption for each of the person's dependents, as determined by the income tax laws of the State, shall be allowed.
- (6) No person shall be qualified to purchase or lease any lot who, or whose spouse, or both of them, owns or is a lessee, under a residential lease for a term exceeding twenty years (including any periods for which the lease may be extended or renewed at the option of the lessee), of any land situated within or without the State suitable for residential use. [L 1962, c 32, pt of §2; Supp, §103A-45; HRS §171-48; am

L 1970, c 184, §2; am L 1972, c 37, §1; am L 1973, c 18, §1; am L 1977, c 49, §1; gen ch 1985]

" **§171-49 Residence lots: unsold; forfeited; surrendered.**

Any lot not sold or leased at public auction or drawing, or sold or leased and forfeited, or surrendered after sale or lease with the consent of the board of land and natural resources, which consent is authorized, may, subject to section 171-21, be disposed of by the board as follows:

- (1) The board shall hold the lot without disposition for a period of thirty days, during which time, any person otherwise qualified to bid interested in securing the lot may apply therefor in writing.
- (2) Upon the expiration of thirty days, if not more than one person has applied for the lot, the board may dispose of the lot to the sole applicant without public auction at not less than the prior upset price; provided that if the lot is one among several available lots and there are more applicants than available lots, this paragraph shall not apply.
- (3) If more than one person has applied for the lot, or if there are more applicants than available lots, upon the expiration of thirty days, the board shall by sale or lease dispose of the lot or all of the available lots, as the case may be, at drawing as provided in section 171-15 or at public auction as provided in sections 171-14 and 171-16, at the prior upset price or, if the drawing or public auction is held more than six months after the date of the prior drawing or public auction, at the upset price fixed by a reappraisal. [L 1962, c 32, pt of §2; Supp, §103A-46; HRS §171-49; am L 1970, c 184, §3]

" **[\$171-49.5] Resale, first offer to board; limitation on resale price.** Any lot [sold] or leased for residential use pursuant to this part shall not be sold or transferred again by the purchaser, the purchaser's personal representative, or the purchaser's heirs for a period of ten years from date of disposition unless the purchaser first offers the land or lease and improvements for sale and surrender to the board in accordance with the provisions of section 171-17(c) or section 171-81, as the case may be. [L 1970, c 184, §6; am L 1976, c 200, pt of §1; gen ch 1985]

" **[\$171-49.7] Public lands suitable and available for residential development; inventory.** The department of land and natural resources shall complete and maintain a current

inventory of all public lands placed in the urban district by the land use commission under chapter 205 which are or may be suitable and available for residential development. This inventory shall be updated at the end of each quarter and shall contain the following information: the island and area in which the land is situated, the acreage, and such other information which the department determines may be necessary to identify and inventory the land. [L 1977, c 63, §1]

"D. MISCELLANEOUS

Cross References

Civil relief for state military forces, see chapter 657D.
Disposition of state boating facility properties, see §200-2.5.

§171-50 Exchanges. (a) Purpose. No exchange of public land for private land shall be made except for public purposes, including but not limited to (1) consolidation of holdings of public lands; (2) straightening of boundaries of public lands; (3) acquisition of adequate access for landlocked public lands which have development potential; or (4) acquisition of lands suitable for residential use. Exchanges shall be effected without public auction. Public notice of any proposed exchange shall be given in accordance with the applicable provisions set forth in section 171-16(d). All private lands conveyed to the State by way of exchanges shall thereafter become public lands.

(b) Value. The public land exchanged shall be of substantially equal value to that of the private land. In any exchange, the fair market value of the private land and the public land shall be separately determined by a disinterested qualified appraiser or appraisers and the cost shall be borne equally between the owner and the board. No payment by the State shall be required should the private land exceed the value of the public land, but any difference in value of the public land over the private land shall be paid to the State at the time of the exchange; provided no exchange shall be made should public land exceed one hundred twenty per cent of the value of the private land.

(c) Legislative approval. Any exchange of public land for private land shall be subject to approval by majority vote of both houses of the legislature in any regular or special session following the date of the board of land and natural resources' approval in principle of the exchange. The state department or agency shall submit for introduction to the legislature a resolution for review of action on any exchange to be

consummated by the board wherein exchange deeds will be executed by the parties together with the following information:

- (1) The specific location and size in square feet or in other precise measure of the parcels of land to be exchanged;
- (2) The value of the lands to be conveyed by the State and the private party;
- (3) The name or names of the appraiser or appraisers;
- (4) The date of the appraisal valuation;
- (5) The purpose for which the lands are being exchanged;
- (6) A detailed summary of any development plans for the land to be exchanged; and
- (7) A statement of whether the land is, or is not, land that was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands, and a detailed explanation of how the state department or agency made this determination.

A copy of the draft resolution shall also be submitted to the office of Hawaiian affairs at least three months prior to the convening of a regular or special session of the legislature to allow the office to determine whether the land was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands.

(d) Exception. Notwithstanding any limitations set forth in this section, the board may exchange public land for Hawaiian homes commission's available land of equal value in order to consolidate its holdings or the holdings of the commission or to effectuate better the purposes of this chapter or of the Hawaiian Homes Commission Act of 1920, as amended. [L 1962, c 32, pt of §2; am L 1965, c 239, §25; Supp, §103A-47; am L 1967, c 234, §3; HRS §171-50; am L 1969, c 281, §1; am L 1970, c 184, §4; am L 1972, c 175, §1; am L 1975, c 69, §§1, 2; am L 1977, c 17, §1; am L 2003, c 75, §1; am L 2009, c 176, §3; am L 2011, c 169, §1; am L 2014, c 146, §1]

Case Notes

Claim for relief against state officials based on alleged illegality of exchange of ceded lands was barred by State's sovereign immunity. 73 H. 578, 837 P.2d 1247.

Law Journals and Reviews

Courts in the "Age of Reconciliation": Office of Hawaiian Affairs v. HCDCH. 33 UH L. Rev. 503 (2011).

" **[§171-50.1] Acquisition of lands for exchange under chapter 516.** The board may acquire private lands by negotiated purchase to be exchanged to effect the conversion of leasehold lands to fee simple ownership under section 171-50.2. The legislature declares that such acquisition is for the public purpose of encouraging home ownership on as widespread a basis as possible. [L 1975, c 184, pt of §3]

" **§171-50.2 Exchanges for conversion of leasehold lands to fee simple ownership.** The board may exchange public lands for private lands to be condemned or involuntarily sold pursuant to chapter 516. An exchange shall be requested by the executive director of the Hawaii housing finance and development corporation and shall be effected in conformity with section 171-50; provided that an exchange shall be subject to legislative approval; provided further that the private lands conveyed to the State shall be disposed of pursuant to chapter 516; and provided further that lands exchanged need not be of like-kind or comparable use; provided further that no lands classified as conservation shall be exchanged for private lands. [L 1975, c 184, pt of §3; am L 1987, c 337, §7(2); am L 1997, c 350, §14; am L 2005, c 196, §26(b); am L 2006, c 180, §16; am L 2014, c 146, §2]

" **§171-51 Quitclaim.** The board of land and natural resources may, after giving public notice as required in section 171-16(d):

- (1) Quitclaim public lands by deed or land patent in exchange for deeds of private lands by way of compromise or equitable settlement of rights of claimants without auction;
- (2) Execute quitclaim deeds quitclaiming any and all interests of the State in private land for the purpose of perfecting title to such private land in private individuals who have defective titles; provided that no quitclaim may issue where the title to private land is subject to reversion to the State or to a right of entry by the State upon breach of condition subsequent or where the title to the private land is conveyed by the State for specific uses or purposes; provided further that no exchange or quitclaim may be entered into or made where the interest of the State arises by reason of any provision in a deed or patent issued by the State, which prescribes the specific use to which the land may be put or the specific purpose for which the land was conveyed; provided further that any exchange or quitclaim shall be subject to disapproval

by the legislature by a two-thirds vote of either the senate or the house of representatives or by majority vote of both, in any regular or special session next following the date of the exchange or quitclaim. [L 1962, c 32, pt of §2; am L 1965, c 239, §26; Supp, §103A-48; am L 1967, c 234, §3; HRS §171-51]

" **§171-52 Remnant.** (a) Definition. The term "remnant" means a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics. A remnant may be:

- (1) Land acquired by condemnation which is in excess of the needs for which condemned;
- (2) Vacated, closed, abandoned, or discontinued road, street or alley or walk, railroad, ditch, or other right-of-way.

(b) Disposition restriction. No parcel shall be disposed of as a remnant solely for the reason that it lacks an adequate access.

(c) Disposition. Remnants or portions thereof may be disposed of by the board of land and natural resources without recourse to public auction in the manner set forth herein. Any remnant or portion thereof to be disposed of shall be first offered for sale to the abutting owner for a reasonable period of time at a reasonable price based on appraised value. In the event that one abutting landowner lacks access to a street, and such access can be secured by disposition of the remnant, such remnant shall be first offered for sale to such abutting owner, or subdivided so as to protect the access of all abutting landowners. If there is more than one abutting owner who is interested in purchasing the remnant, it shall be sold to the one submitting a sealed bid containing the highest offer above the appraised value. If the remnant abuts more than one parcel, the board may subdivide the remnant so that a portion thereof may be sold to each abutting owner at the appraised value; provided that no remnant shall be sold to any abutting owner unless the remnant, when combined or consolidated with the abutting property, shall constitute a lot acceptable to the appropriate agency of the county in which the remnant lies; and provided further that appropriate language shall be included in any document of conveyance of such remnant to assure use of the remnant in accordance with the applicable ordinances, rules, and regulations of the county concerned.

(d) Appraisal. The value of the remnant or portion thereof shall be appraised by an independent appraiser, which appraisal shall take into consideration the limited market for

the remnant and the resulting enhancement to an abutting owner's property by the addition of the remnant. The value of a remnant or portion thereof which is surplus to state highway requirements and is in the inventory of such surplus remnants as of December 31, 1981, may be appraised by an employee of the State qualified to appraise lands. [L 1962, c 32, pt of §2; am L 1965, c 239, §27; Supp, §103A-49; HRS §171-52; am L 1976, c 12, §1; am L 1977, c 3, §1; am L 1982, c 6, §1]

" **§171-53 Reclamation and disposition of submerged or reclaimed public land.** (a) Any submerged public land or land beneath tidal waters shall not hereafter be reclaimed by private abutting owners, except as hereinafter provided.

(b) As to presently reclaimed land, the board of land and natural resources, after finding that its disposition is not prejudicial to the best interest of the State, community or area in which such reclaimed land is located and after giving public notice in accordance with section 171-16(d) of its intention to dispose, may dispose of it, without recourse to public auction, to the abutting owner, by sale or lease; provided that if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value or fair market rental of the submerged public land, but if the reclaimed land has been filled or made otherwise, it shall be disposed of at the fair market value or fair market rental of the reclaimed land.

(c) The board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter; provided that the authorization of the legislature shall not be required for leases issued under chapter 190D; and provided further that the approval of the governor and authorization of the legislature shall not be required for any grant of easement or lease of state submerged lands or lands beneath tidal waters used for moorings, cables, or pipelines; provided further that this exemption shall not apply to easements for cables used for interisland electrical transmission or slurry pipelines used for transportive materials, mined at sea, or waste products from the processing of the same.

The lease shall provide that the lands shall be reclaimed at the expense of the lessee. Title to the reclaimed lands shall remain in the State.

(d) Whenever in connection with reclaimed lands or the reclamation of submerged lands or lands beneath tidal waters by

authority of law, the board deems it advantageous to the State in order to settle the rights (littoral or otherwise), if any, of an abutting owner, to create public beaches, or to consolidate the holdings of public lands in the vicinity or provide public ways or access to the public lands, it may, with the prior approval of the governor, sell, lease, or transfer by way of an exchange, without recourse to public auction but subject to the limitations contained in section 171-50 and to the other provisions of this chapter, lands having the status of public lands. [L 1962, c 32, pt of §2; am L 1965, c 239, §28; Supp, §103A-50; am L 1967, c 234, §3; HRS §171-53; am L 1981, c 199, §2; am L 1987, c 367, §2; am L 1999, c 176, §1; am L 2000, c 261, §§3, 5; am L 2002, c 68, §2 and c 103, §1(2); am L 2005, c 129, §2]

Note

Lease of submerged lands at Ala Wai boat harbor exempt from legislative authorization. L 2011, c 197, §8.

Cross References

Ala Wai boat harbor; leases, see §200-2.6.

Reclamation of lands, see chapter 173.

" **§171-54 Land license.** The board of land and natural resources may issue land licenses affecting public lands for a period not exceeding twenty years. No land license shall be disposed of except at public auction as provided in this chapter; provided that the board may, after publication of notice in accordance with section 171-16(d), dispose of a land license by negotiation, without recourse to public auction, if it determines that the public interest will best be served thereby. The disposition of a land license by negotiation shall be upon such terms and conditions as the board determines shall best serve the public interest. [L 1962, c 32, pt of §2; am L 1965, c 239, §29; Supp, §103A-51; am L 1967, c 234, §9; HRS §171-54]

" **§171-55 Permits.** Notwithstanding any other law to the contrary, the board of land and natural resources may issue permits for the temporary occupancy of state lands or an interest therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State, subject, however, to those restrictions as may from time to time be expressly imposed by the board. A permit on a month-to-month basis may continue

for a period not to exceed one year from the date of its issuance; provided that the board may allow the permit to continue on a month-to-month basis for additional one year periods. [L 1962, c 32, pt of §2; Supp, §103A-52; am L 1967, c 234, §11; HRS §171-55; am L 1990, c 90, §1]

" **§171-55.5 Agricultural plots.** The department of land and natural resources, in cooperation with the department of agriculture and the city and county of Honolulu, shall adopt rules in accordance with chapter 91 to allow for use of vacant public lands for farming or agricultural recreation. [L 1974, c 243, §2]

" **§171-56 Contract or license for concessions or concession space.** The board of land and natural resources may, subject to chapter 102, dispose of concessions, as defined in chapter 102, and shall enter into contracts or issue licenses for such concessions; provided that the duration of the contract or license shall be related to the investment required, but in no event to exceed fifteen years. [L 1962, c 32, pt of §2; am L 1963, c 93, §4; Supp, §103A-53; am L 1967, c 189, §5; HRS §171-56]

" **§171-57 Reserved rights and easements.** Notwithstanding any limitations to the contrary, where public land is disposed of with reservation in the State of quarry rights to rock, sand or gravel or an easement, and if the board of land and natural resources finds that a disposition of the reserved right or easement is not prejudicial to the best interest of the State, community or area in which the land is situated, it may, after giving public notice of the intended disposition as provided in section 171-16(d), dispose of the reserved right or easement to the owner of the land by direct sale or by lease without public auction. [L 1962, c 32, pt of §2; am L 1965, c 239, §5; Supp, §103A-54; am L 1967, c 234, §3; HRS §171-57; am L 1971, c 18, §1]

" **§171-58 Minerals and water rights.** (a) Except as provided in this section the right to any mineral or surface or ground water shall not be included in any lease, agreement, or sale, this right being reserved to the State; provided that the board may make provisions in the lease, agreement, or sale, for the payment of just compensation to the surface owner for improvements taken as a condition precedent to the exercise by the State of any reserved rights to enter, sever, and remove minerals or to capture, divert, or impound water.

(b) Disposition of mineral rights shall be in accordance with the laws relating to the disposition of mineral rights enacted or hereafter enacted by the legislature.

(c) *[Repeal and reenactment on June 30, 2019. L 2016, c 126, §4(1).]* Disposition of water rights may be made by lease at public auction as provided in this chapter or by permit for temporary use on a month-to-month basis under those conditions which will best serve the interests of the State and subject to a maximum term of one year and other restrictions under the law; provided that:

- (1) Where an application has been made for a lease under this section to continue a previously authorized disposition of water rights, a holdover may be authorized annually until the pending application for the disposition of water rights is finally resolved or for a total of three consecutive one-year holdovers, whichever occurs sooner; provided that the total period of the holdover for any applicant shall not exceed three years; provided further that the holdover is consistent with the public trust doctrine;
- (2) Any disposition by lease shall be subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session next following the date of disposition; and
- (3) After a certain land or water use has been authorized by the board subsequent to public hearings and conservation district use application and environmental impact statement approvals, water used in nonpolluting ways, for nonconsumptive purposes because it is returned to the same stream or other body of water from which it was drawn, and essentially not affecting the volume and quality of water or biota in the stream or other body of water, may also be leased by the board with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution.

(d) Any lease of water rights shall contain a covenant on the part of the lessee that the lessee shall provide from waters leased from the State under the lease or from any water sources privately owned by the lessee to any farmer or rancher engaged in irrigated pasture operations, crop farming, pen feeding operations, or raising of grain and forage crops, or for those public uses and purposes as may be determined by the board, at the same rental price paid under the lease, plus the proportionate actual costs, as determined by the board, to make these waters available, so much of the waters as are determined

by the board to be surplus to the lessee's needs and for that minimum period as the board shall accordingly determine; provided that in lieu of payment for those waters as the State may take for public uses and purposes the board may elect to reduce the rental price under the lease of water rights in proportion to the value of the waters and the proportionate actual costs of making the waters available. Subject to the applicable provisions of section 171-37(3), the board, at any time during the term of the lease of water rights, may withdraw from waters leased from the State and from sources privately owned by the lessee so much water as it may deem necessary to (1) preserve human life and (2) preserve animal life, in that order of priority; and that from waters leased from the State the board, at any time during the term of the lease of water rights, may also withdraw so much water as it may deem necessary to preserve crops; provided that payment for the waters shall be made in the same manner as provided in this section.

(e) Any new lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not approve any new lease of water rights without the foregoing covenant or a watershed management plan. The board shall prescribe the minimum content of a watershed management plan; provided that the watershed management plan shall require the prevention of the degradation of surface water and ground water quality to the extent that degradation can be avoided using reasonable management practices.

(f) Upon renewal, any lease of water rights shall contain a covenant that requires the lessee and the department of land and natural resources to jointly develop and implement a watershed management plan. The board shall not renew any lease of water rights without the foregoing covenant or a watershed management plan. The board shall prescribe the minimum content of a watershed management plan; provided that the watershed management plan shall require the prevention of the degradation of surface water and ground water quality to the extent that degradation can be avoided using reasonable management practices.

(g) The department of land and natural resources shall notify the department of Hawaiian home lands of its intent to execute any new lease, or to renew any existing lease of water rights. After consultation with affected beneficiaries, these departments shall jointly develop a reservation of water rights sufficient to support current and future homestead needs. Any lease of water rights or renewal shall be subject to the rights of the department of Hawaiian home lands as provided by section

221 of the Hawaiian Homes Commission Act. [L 1962, c 32, pt of §2; am L 1965, c 239, §32; Supp, §103A-55; HRS §171-58; am L 1970, c 101, §1; am L 1987, c 367, §1; am L 1990, c 201, §1; am L 1991, c 325, §3; am L 2016, c 126, §1]

Note

Applicability of 2016 amendment (repealed June 30, 2019). L 2016, c 126, §4.

Water rights lease applications; annual reports to 2017-2020 legislature. L 2016, c 126, §2.

Cross References

Reservation of mineral rights, see §182-2.

Law Journals and Reviews

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders. 25 UH L. Rev. 85.

Case Notes

Rental by board of excess transmission capacity in Molokai Irrigation System did not "dispose" of state water where the proportionate amount of state water in the system was not diminished. 62 H. 546, 617 P.2d 1208.

" **§171-58.5 Prohibitions.** The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits seaward from the shoreline is prohibited with the following exceptions:

- (1) The inadvertent taking from seaward of the shoreline of these materials, such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;
- (2) For the replenishment or protection of public shoreline areas and adjacent public lands seaward of the shoreline, or construction or maintenance of state approved lagoons, harbors, launching ramps, or navigational channels with a permit authorized under chapter 183C;
- (3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed

- on adjacent areas unless this placement would result in significant turbidity;
- (4) The cleaning of areas seaward of the shoreline for state or county maintenance purposes including the purposes under section 46-12; provided that the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity;
 - (5) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii State Constitution; or
 - (6) For the response to a public emergency or a state or local disaster. [L 1988, c 375, §2; am L 1989, c 356, §3; am L 1995, c 11, §3 and c 69, §2; am L 2013, c 120, §1]

Cross References

Mining or taking of sand, etc., see §205A-44.

" **§171-59 Disposition by negotiation.** (a) A lease of public land may be disposed of through negotiation upon a finding by the board of land and natural resources that the public interest demands it. Where the public land is being sought under this section by a sugar or pineapple company, and the company is the owner or operator of a mill or cannery, then, for the purposes of this section, the economic unit shall be that acreage of public land which when taken together with the lands already owned or controlled or available to the company, when cultivated is found by the board to be necessary for the company's optimum mill or cannery operation. In all other cases, public land to be sold under this section shall be an economic unit as provided in section 171-33(3).

After a determination is made to negotiate the disposition of a lease, the board shall:

- (1) Give public notice as in public auction, in accordance with the procedure set forth in section 171-16(a), of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;
- (2) Establish reasonable criteria for the selection of the lessee; provided that where the intended use of the land is agriculture, the department of agriculture shall establish the criteria;

- (3) Determine the applicants who meet the criteria for selection set by the board or the department of agriculture, as the case may be, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board or the department of agriculture were followed; provided that if any applicant does not notify the board of the applicant's objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (3), above, dispose of the lease by negotiation.

If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.

(b) Disposition of public lands for airline, aircraft, airport-related, agricultural processing, cattle feed production, aquaculture, marine, maritime, and maritime-related operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

- (1) The disposition encourages competition within the aeronautical, airport-related, agricultural, aquaculture, maritime, and maritime-related operations;
- (2) The disposition shall not exceed a maximum term of thirty-five years, except in the case of:
 - (A) Maritime and maritime-related operations, which may provide for a maximum term of seventy years; and
 - (B) Aquaculture operations, which may provide for a maximum term of sixty-five years; provided that aquaculture operations in good standing may seek to renew a lease issued under this section and, during the lease term, may engage in supportive activities that are related to or integrated with aquaculture; and
- (3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the purposes of this subsection:

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

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

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

"Maritime-related" means a purpose or activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime industry. [L 1962, c 32, pt of §2; Supp, §103A-56; am L 1967, c 189, §6; HRS §171-59; am L 1970, c 101, §2; am L 1980, c 48, §1; am L 1984, c 278, §1; gen ch 1985; am L 1992, c 283, §2; am L 2001, c 77, §2; am L 2003, c 127, §2; am L 2008, c 200, §2; am L 2011, c 232, §2; am L 2012, c 47, §2]

" **§171-60 Development through private developer.** (a) Leasehold projects. Notwithstanding anything in this chapter to the contrary, the board, by negotiation and without recourse to public auction, with the prior approval of the governor and authorization of the legislature by concurrent resolution approving a development project, the concurrent resolution to be adopted by each house no earlier than forty-eight hours after printed copies thereof have been made available to members of that house, may lease public lands, including submerged lands to be reclaimed at the developer's or developers' expense, to a private developer or developers, or enter into a development agreement with a private developer or developers, for development and subdivision of the lands as a leasehold project for agricultural, industrial, single-family or multiple-family residential, commercial, business, or hotel and resort uses, as provided in this subsection.

Prior to leasing any public land to, or entering into a development contract with, a developer or developers, the board shall:

- (1) Determine:
 - (A) Whether the lands shall be developed by disposition or contract;
 - (B) The location, area, and size of the lands to be developed;
 - (C) The use or uses to which the lands shall be put, which shall be in conformity with the applicable

- state, city and county, or county zoning and subdivision laws, ordinances, or regulations;
- (D) The estimated period of time to construct and complete the development;
 - (E) Minimum requirements for on-site and off-site improvements, if any;
 - (F) Whether any beach rights-of-way or public game preserves should be established; and
 - (G) Other terms and conditions that are deemed necessary by the board;
- (2) Set the minimum rental of the lands to be developed on the basis of an appraisal report prepared by an appraiser for the board determining the fair market value of the lands to be developed;
 - (3) Give public notice of the proposed disposition or contract at least once in each of three successive weeks statewide and, in addition, in the appropriate county, if the land is situated in the first, second, and fourth districts. The notice shall invite interested persons to submit applications to be selected as the developer or developers for the project and sealed bids for the development of the lands. The notice shall also state in general terms the size, location, and minimum rental of the area to be leased to the developer or developers, the minimum requirements for any required off-site and on-site improvement, the maximum estimated period of time to install and complete the construction of any required improvement, the use or uses to which the lands shall be put, the last date on which applications and sealed bids will be received by the board, which date shall not be less than thirty days or more than ninety days after the last notice, and the times and places at which more detailed information with respect to the disposition or contract may be secured by interested persons.

Each applicant shall include, together with the applicant's sealed bid, a financial statement, and performance and experience records in real estate development; provided that the board, in its discretion, may require the applicant to submit answers, under oath, to questions contained in a questionnaire prepared by the board; the applicant's sealed bid shall include a development plan in as much detail as possible and including but not limited to the following: the applicant's proposal as to how and when the applicant intends to develop the land,

including any permitted incremental development, the amount of money the applicant intends to commit to the total project, the method of recovery of the applicant's costs and profits, the amount the applicant agrees to pay to lease or contract to develop the land, and the income the State will receive from leases;

- (4) Establish reasonable criteria for the selection of the private developer or developers; and
- (5) Determine within forty-five days of the last day for filing applications the applicant or applicants who meet the criteria for selection set by the board, and notify all applicants of its determination within seven days of a determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the board of any objections and the grounds therefor, in writing, within ten days of the receipt of a notice, the applicant shall be barred from proceeding to seek legal remedy for an alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection as the developer, the board then may negotiate the details of the disposition of the public lands to, or enter into a development contract with, the developer; provided that the terms of the disposition or contract shall not be less than those proposed by the developer in the application and shall be subject to the concurrence of the governor. If two or more applicants meet the criteria for selection, the board shall consider all of the relevant facts of the disposition or contract, the proposals submitted by each applicant, the experience and financial capability of each applicant, and within forty-five days from the date of selection of the applicants that met the criteria, shall select the applicant who submitted the best offer. The board then may negotiate the details of the disposition of the public lands or enter into a development contract with the developer; provided that the terms of the disposition or contract shall not be less than those proposed by the developer in the application and shall be subject to the concurrence of the governor.

The terms of any disposition or development contract shall include the following, wherever appropriate:

- (A) The development and subdivision shall comply with appropriate state, county, and city and county zoning and subdivision requirements;
- (B) The developer or developers shall file with the board a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the disposition or development contract;
- (C) The use or uses to which the land will be put. Development of large, though economic, tracts of land with multiple but complementary uses should be encouraged;
- (D) The dates on which the developer must submit preliminary plans and final plans and specifications for the total development to the board for approval, which approval shall not be arbitrarily or capriciously withheld. No construction shall commence until the board has approved the final plans and specifications; provided that with board approval construction on an incremental basis may be permitted;
- (E) The date of completion of the total development, including the date of completion of any permitted incremental development;
- (F) The minimum requirements for off-site and on-site improvements that the developer must install, construct, and complete by the date of completion of the total development. The board may permit incremental development and establish the minimum requirements for off-site and on-site improvements that must be installed, constructed, and completed prior to the date of completion of the total development;
- (G) In the event of a lease the developer may be permitted, after the developer has completed construction of any required off-site improvement, to assign or sublease with board approval portions of the leased lands in which the construction of any required off-site improvement has been completed to a purchaser or sublessee who shall assume the obligations of the developer relative to the parcel being assigned or subleased, including the construction of any on-site improvement. The board may permit a

- developer to share in the lease rent for a fixed period in order to recover costs and profit;
- (H) A development agreement may provide that the board shall issue a lease to the nominee or nominees of the developer, including the developer, pursuant to the terms previously negotiated and agreed upon between the developer and the board, including the lease rent to the lessee and the method of recoupment of expenses and profit by the developer;
 - (I) The board shall lay out and establish a number of rights-of-way from proposed or established highways to the public beaches and game preserves in order that the right of the people to utilize the public beach or beaches and public game preserves shall be protected.

Prior to leasing or entering into any development contract, the board shall determine the feasibility of hunting on the lands, and if any of them is suitable for hunting or during the term of the lease may become suitable for hunting, the board may reserve the lands as game preserves. Where the board finds that hunting on the lands would not be consistent with the rights of the lessee or for other good cause, the board need not reserve the lands as game preserves.

The cost of the rights-of-way and any fencing which may be required shall be borne by the State, lessee, or jointly as the board may deem appropriate prior to the leasing of the lands.

In any disposition of beach-front lands, the board shall give consideration to the needs of the public for beach area above and below the high-water mark;

- (J) The board may include in any development contract or lease, provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in sections 171-20, 171-21, and 171-22, respectively; and
- (K) Any other terms and conditions set by the board.

The term "developer" as used in this subsection means a person, firm, corporation, partnership, association, trust, or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for single-family, multiple-family, industrial, hotel and

resort, business commercial, or agricultural uses and has the financial ability satisfactory to the board to develop and subdivide land.

(b) Fee simple residential development. Notwithstanding anything in this chapter to the contrary, the board, by negotiation and without recourse to public auction, with the prior approval of the governor and authorization of the legislature by concurrent resolution approving the development project, the concurrent resolution to be adopted by each house no earlier than twenty-four hours after printed copies thereof have been made available to the members of that house, may dispose of public lands, including submerged lands to be reclaimed at developer's or developers' expense, by sale of the fee, for single-family or multiple-family residential uses, as provided in this subsection.

Prior to the sale in fee of any public land to a developer or developers, the board shall:

- (1) Determine:
 - (A) The location, area, and size of the lands to be developed;
 - (B) The use or uses to which the lands shall be put, which shall be in conformity with the applicable state, city and county, or county zoning and subdivision laws, ordinances, or regulations;
 - (C) The estimated period of time to construct and complete the development;
 - (D) Minimum requirements for on-site and off-site improvements, if any;
 - (E) Whether any beach rights-of-way or game preserves should be established; and
 - (F) Any other terms and conditions deemed necessary by the board;
- (2) Set the minimum sale price of the lands to be developed on the basis of an appraisal report prepared by an appraiser for the board determining the fair market value of the lands to be developed;
- (3) Give public notice of the proposed disposition at least once in each of three successive weeks statewide and, in addition, in the appropriate county if the land is situated in the first, second, and fourth districts. The notice shall invite interested persons to submit applications to be selected as the developer or developers for the project and sealed bids for the development of the lands. The notice shall also state in general terms the size, location, and minimum sale price of the area to be sold to the developer or developers, the minimum requirements for any required

off-site and on-site improvements, the maximum estimated period of time to install and complete the construction of any required improvements, the use or uses to which the lands shall be put, the last date on which applications and sealed bids will be received by the board, which date shall not be less than thirty days or more than ninety days after the last notice, and the times and places at which more detailed information with respect to the disposition may be secured by interested persons.

Each applicant shall include, together with the applicant's sealed bid, a financial statement and the applicant's performance and experience records in real estate development; provided that the board, in its discretion, may require the applicant to submit answers, under oath, to questions contained in a questionnaire prepared by the board; the applicant's sealed bid shall include a development plan in as much detail as possible and including but not limited to the following: the applicant's proposal as to how and when the applicant intends to develop the land, including any permitted incremental development, the amount of money the applicant intends to commit to the total project, the method of recovery of the applicant's costs and profits, and the amount the applicant agrees to pay to purchase the land;

- (4) Establish reasonable criteria for the selection of the private developer or developers;
- (5) Determine within forty-five days of the last day for filing applications, the applicant or applicants who meet the criteria for selection set by the board, and notify all applicants of its determination within seven days of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided that if any applicant does not notify the board of the applicant's objections and the grounds therefor, in writing, within ten days of the receipt of the notice, the applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.

If only one applicant meets the criteria for selection as the developer, the board may then negotiate the details of the disposition of the public lands to the developer; provided that the terms of the

disposition shall not be less than those proposed by the developer in the developer's application and shall be subject to the concurrence of the governor. If two or more applicants meet the criteria for selection, the board shall consider all of the relevant facts of the disposition, the proposals submitted by each applicant, the experience and financial capability of each applicant and within forty-five days from the date of selection of the applicants that met the criteria, shall select the applicant who submitted the best offer. The board may then negotiate the details of the disposition of the public lands with the developer; provided that the terms of the disposition shall not be less than those proposed by the developer in the developer's application and shall be subject to the concurrence of the governor.

The terms of the disposition shall include the following:

- (A) The development and subdivision shall comply with appropriate state, county, and city and county zoning and subdivision requirements;
- (B) The developer or developers shall file with the board a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants, and conditions of the disposition;
- (C) The use or uses to which the land will be put;
- (D) The dates on which the developer must submit preliminary plans and final plans and specifications for the total development to the board for approval, which approval shall not be arbitrarily or capriciously withheld. No construction shall commence until the board has approved the final plans and specifications; provided that with board approval construction on an incremental basis may be permitted;
- (E) The date of completion of the total development, including the date of completion of any permitted incremental development;
- (F) The minimum requirements for off-site and on-site improvements that the developer must install, construct, and complete by the date of completion of the total development. The board may permit incremental development and establish the minimum requirements for off-site and on-site improvements that must be installed, constructed,

and completed prior to the date of completion of the total development;

- (G) The title to the land shall remain in the State until the purchaser has made all payments required in the terms of the sale and has constructed the improvements as agreed; provided that the developer may assign, with the approval of the board, the developer's sales agreement with the board as security for a loan to finance the balance of or a part of either the purchase price of the land or the cost of improvements, or both; provided further that if incremental development is permitted and the developer has completed construction of the required improvements in the increment and is able to pay or has paid for the agreed purchase price of the land within the increment, then the developer shall be entitled to a land patent or a deed to the land within the completed increment;
- (H) The board shall lay out and establish over and across the lands a reasonable number of rights-of-way from proposed or established highways to the public beaches and game preserves in order that the right of people to utilize the public beach or beaches and public game preserves shall be protected.

The board may provide for the reservation of any lands within the lands to be disposed as game preserves if the board determines the establishment of the game preserves to be in the public interest.

The cost of rights-of-way and fencing which may be required shall be borne by the State, developer, or jointly as the board may deem appropriate prior to the disposition of the lands.

In any disposition of beach-front lands, the board shall give consideration to the needs of the public for beach area above and below the high-water mark;

- (I) The board may include in any sales agreement provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in sections 171-20, 171-21, and 171-22, respectively; and
- (J) Other terms and conditions set by the board.

The term "developer" as used in this subsection means a person, firm, corporation, partnership, association, trust, or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for single-family or multiple-family residential uses and has the financial ability satisfactory to the board to develop and subdivide land. [L 1965, c 239, §39; Supp, §103A-56.1; HRS §171-60; am L 1968, c 68, §2; am L 1970, c 83, §§3, 4; am L 1981, c 199, §3; am L 1983, c 178, §2; gen ch 1985; am L 1998, c 2, §38]

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ 65.

" **§171-61 Cancellation, surrender.** When public land is disposed of with a building requirement and, thereafter, prior to the erection of the building, the land becomes or is discovered to be unfit for the erection of the building, or by change of conditions it becomes impossible or impractical to erect the building, the board of land and natural resources may cancel the disposition, repossess the land, and return to the party from the special land and development fund, notwithstanding the order of priority set forth, the aggregate amount of principal and interest theretofore paid by the party.

Whenever land or a portion thereof under lease can be released or sold for a higher and better use, or for the existing use to a greater economic benefit to the State, the board, subject to the consent of the lessee, the lessee's successors, or assigns, and each holder of record having a security interest, may cancel the lease without compensation to the lessee or withdraw a portion of the land from the lease and release or sell the same; provided that in the event of withdrawal of a portion, the board may in its discretion allow a proportionate reduction in rent; and provided further that in the event buildings and improvements have been erected by the lessee, as permitted under the lease, on the land or portion thereof under lease affected by the cancellation or withdrawal, the board shall pay to the lessee a sum not to exceed the replacement value, less depreciation at the rates used for real property tax purposes. [L 1962, c 32, pt of §2; Supp, §103A-57; am L 1967, c 234, §12; HRS §171-61; am L 1973, c 49, §1; gen ch 1985]

" **§171-62 Sales; payment, default.** When the board of land and natural resources is authorized to sell, it may do so upon part credit and part cash, the balance to be paid in stated installments, and deliver possession of the premises under an

agreement of sale. The rate of interest on the agreement of sale shall not exceed the current rate of interest. Upon payment of the purchase price, plus interest, and upon due performance of the conditions of the sale, the purchaser shall be entitled to a land patent or a deed to the premises.

If any default is made in payment or in the performance or observance of any condition of sale, the sale or agreement of sale shall be forfeited upon notice of default by the board as provided in section 171-20. [L 1962, c 32, pt of §2; Supp, §103A-58; HRS §171-62]

" **§171-63 Waiver of restrictions.** (a) Use. Upon application by the owner and consent therefor having been given by each holder of record having a security interest, and after a finding that the public interest will be served thereby, the board of land and natural resources may amend or waive the conditions restricting the use of land contained in any agreement of sale, deed, or patent upon the condition that the grantee or patentee pay to the board the difference between the fair market value of the land based upon its restricted use and the fair market value with the restrictive condition amended or waived. The foregoing authority granted to the board shall not be construed to authorize the board to waive the condition contained in any agreement of sale, deed, or patent which provides that upon change in use or breach of a condition, the title automatically reverts back to the State, or the State shall have power of termination.

(b) Residential lots. In case of a residential lot, the board, subject to the consent of each holder of record having a security interest, may waive strict adherence to the use thereof for residential purposes, if the owner or lessee desires to utilize part of the land for agricultural purposes together with the owner's or lessee's residence, provided that the agricultural use is not inconsistent or contrary to local applicable health or zoning ordinances and upon the condition that the grantee or patentee pay to the board the difference between the fair market value of the land based upon its restricted use and the fair market value with the restrictive condition amended or waived. The foregoing authority granted to the board shall not be construed to authorize the board to waive the condition contained in any agreement of sale, deed, or patent which provides that upon change in use or breach of a condition, the title automatically reverts back to the State, or the State shall have power of termination. Anything in this chapter to the contrary notwithstanding, in case of a residential lot sold in fee simple:

- (1) All restrictions relating to the use thereof shall expire ten years after the date of the issuance of the patent or deed by the State or fifteen years after the date of the sale by the State, whichever is sooner, provided that any change in use of the lot after the ten or fifteen years, as the case may be, shall be in accordance with applicable state and county zoning requirements; and
- (2) Upon an application signed by all land owners in the subdivision, the board may waive any restrictive covenant upon the land, as long as the waiver shall not cause a violation of any state or county zoning requirements. [L 1962, c 32, pt of §2; Supp, §103A-59; am L 1967, c 234, §13; HRS §171-63; gen ch 1985; am L 1992, c 168, §1]

Case Notes

Restrictive covenant pertaining to height did not expire; term "use" refers to the use of the property for residential purposes. 70 H. 321, 770 P.2d 414.

" **§171-64 Covenants against discrimination.** The board of land and natural resources shall provide in every patent, deed, lease, agreement, license, or permit that the use and enjoyment of the premises being granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color, national origin, sex or a physical handicap. The board shall not dispose of any public land to any person who practices discrimination based upon race, creed, color, national origin, sex or a physical handicap. As used in this section "physical handicap" means a physical impairment which substantially limits one or more of a person's major life activities. [L 1962, c 32, pt of §2; am L 1965, c 239, §6; Supp, §103A-60; HRS §171-64; am L 1976, c 159, §1; am L 1981, c 116, §7]

" **[§171-64.5] Nonconventional uses; department of health; approval and authorization; Waimano ridge.** The department of health shall provide at least ninety days notification to the affected neighborhood boards and legislators that represent the district where Waimano ridge is located, and obtain the approval of the governor prior to new uses or the expanded use of the land as a sex offender treatment facility, drug treatment facility, state laboratory, or other uses. [L Sp 2005, c 7, §2]

" **§171-64.7 Legislative approval of sale or gift of lands.**

(a) This section applies to all lands or interest therein owned or under the control of state departments and agencies classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or any other manner, including accreted lands not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter, including:

- (1) Land set aside pursuant to law for the use of the United States;
- (2) Land to which the United States relinquished the absolute fee and ownership under section 91 of the Organic Act prior to the admission of Hawaii as a state of the United States;
- (3) Land to which the University of Hawaii holds title;
- (4) Land to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (5) Land to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (6) Land that is set aside by the governor to the Aloha Tower development corporation; or land to which the Aloha Tower development corporation holds title in its corporate capacity;
- (7) Land that is set aside by the governor to the agribusiness development corporation; or land to which the agribusiness development corporation in its corporate capacity holds title; and
- (8) Land to which the high technology development corporation in its corporate capacity holds title.

(b) Notwithstanding any law to the contrary, no sale of lands described in subsection (a) in fee simple including land sold for roads and streets, or gift of lands described in subsection (a) in fee simple to the extent such gift is otherwise permitted by law, shall occur without the prior approval of the sale or gift by the legislature by concurrent resolution to be adopted by each house by at least a two-thirds majority vote of the members to which each house is entitled in a regular or special session at which a concurrent resolution is submitted for approval of the sale; provided that the provisions of this section shall not apply to remnants, as that term is defined in section 171-52, or portions thereof; provided further

that this section shall not apply to the issuance of licenses, permits, easements, and leases executed in conformance with the laws applicable to the lands listed in subsection (a); provided further that this section shall not apply to non-ceded lands conveyed to the University of Hawaii after December 31, 1989, to which the University of Hawaii holds title; provided further that this section shall not apply to reserved housing, as that term is defined in section 206E-101, conveyed by the Hawaii community development authority.

(c) The state department or agency proposing to sell or give any state land described in subsection (a) shall submit for introduction to the legislature a concurrent resolution for review of the proposed sale or gift. The concurrent resolution shall contain a list of all sales or gifts of state land proposed by the state department or agency. The concurrent resolution shall contain the following information:

- (1) The specific location and size in square feet or in other precise measure of the parcels of land to be sold or given;
- (2) The appraisal value of the land to be sold or given;
- (3) The names of all appraisers performing appraisals of the land to be sold or given;
- (4) The date of the appraisal valuation;
- (5) The purpose for which the land is being sold or given;
- (6) A detailed summary of any development plans for the land to be sold or given; and
- (7) A statement of whether the land is, or is not, land that was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands, and a detailed explanation of how the state department or agency made this determination.

A draft of the concurrent resolution for the prior approval of a sale or gift of land shall also be submitted to the office of Hawaiian affairs at least three months prior to the convening of a regular or special session of the legislature to allow the office to determine whether the land was classed as government or crown lands previous to August 15, 1895, or was acquired by the State in exchange for such lands.

(d) If the legislature fails to approve the concurrent resolution by at least a two-thirds majority vote of both houses, the transaction shall be abandoned by the state department or agency.

(e) Prior to finalizing any proposal for the sale or gift of lands described in subsection (a) to a person or entity other than the State, its agencies, or its entities, and prior to submission of the concurrent resolution to the legislature under

subsection (c), the State, agency, or entity, as appropriate, shall hold an informational briefing on the proposed sale or gift in the community where the land to be sold or given is located.

(f) This section shall not apply to sales or gifts of lands described in subsection (a) between state departments or agencies, to sales of available lands under the Hawaiian Homes Commission Act, or to the fee simple sale of affordable homes on lands not classified as government or crown lands previous to August 15, 1895, or exchanged subsequent to August 15, 1895, for lands classified as government or crown lands previous to August 15, 1895, that are subject to resale restrictions as set forth in section 201H-47 and that were acquired by the Hawaii housing finance and development corporation either at a foreclosure sale or under a buyback as authorized in section 201H-47. [L 2009, c 176, §2; am L 2010, c 56, §1 and c 174, §2; am L 2011, c 169, §2; am L 2012, c 282, §3; am L 2013, c 38, §3; am L 2014, c 61, §2]

Revision Note

Section was enacted as a new part but is designated to this part pursuant to §23G-15.

Law Journals and Reviews

Courts in the "Age of Reconciliation": Office of Hawaiian Affairs v. HCDCH. 33 UH L. Rev. 503 (2011).

Demolition of Native Rights and Self Determination: Act 55's Devastating Impact through the Development of Hawaii's Public Lands. 35 UH L. Rev. 297 (2013).

"PART III. SPECIAL DISPOSITIONS; SALES AND LEASES PERMITTED WITHOUT PUBLIC AUCTION

A. CERTAIN AGRICULTURAL USES, INCLUDING SPECIAL LIVESTOCK AND PASTURE

§171-65 Leases, leases with option to purchase, sales permitted; when. Land intended for disposition as farm lot for truck crops or for horticultural, pasture, or special livestock use, may be disposed of by lease, lease with option to purchase, or in fee simple. Such disposition may be by drawing of lot, without recourse to public auction, notwithstanding any other provision in this chapter to the contrary; provided that the right to any values in the land not attributable to these agricultural uses shall be reserved to the State.

Dispositions under this section shall be made only to individuals who satisfy the requirements established by the board and then only if the individual, either oneself or whose spouse, or both, does not already own lands of comparable use in the State; provided that the ownership by the individual or the individual's spouse of lands of comparable use shall not be a disqualification in applying for a lease within an agricultural park. [L 1962, c 32, pt of §2; Supp, §103A-61; HRS §171-65; am L 1974, c 231, §3(1); am L 1975, c 121, §2; gen ch 1985]

" **§171-66 Planning.** In addition to the requirements set forth in sections 171-33 and 171-34, prior to making these dispositions, the board of land and natural resources shall:

- (1) Determine the economic feasibility and need for proposed disposition;
- (2) Determine the minimum economic unit required for the successful undertaking of the specific use intended, taking into consideration soil fertility, soil condition, and availability of water; and
- (3) Subdivide the land into economic units and make such improvements as are necessary in conformity with applicable county or city and county zoning and subdivision requirements, including the construction of necessary roads and irrigation facilities. [L 1962, c 32, pt of §2; Supp, §103A-62; HRS §171-66]

" **§171-67 Restrictions; conditions.** In addition to such other restrictions or conditions that may be established by the board of land and natural resources to carry out the purpose of this chapter and of the provisions of the state constitution, all sale, lease, or lease with option to purchase, of a farm lot shall be subject to the following conditions, which shall be covenants running with the land:

- (1) The lot shall be used for farm purposes only;
- (2) The purchaser or lessee shall reside on the premises granted; provided that with the consent of the board, the purchaser or lessee may live off the premises if the purchaser's or lessee's residence is within a reasonable distance therefrom;
- (3) The purchaser or lessee shall derive the major portion of the purchaser's or lessee's total annual income from the production of the crops or products for which production the land is granted to the purchaser or lessee; provided that this restriction shall not apply if the purchaser or lessee becomes enfeebled or is widowed;

- (4) In the case of a lease, those provisions set forth in sections 171-35, 171-36 and 171-37, unless otherwise specifically provided in this section;
- (5) In the case of a fee simple sale, the improvement required and the specific use or uses intended;
- (6) For a period of five years after the issuance of a patent or lease, the purchaser or lessee shall not sell, sublet, assign, transfer, or in other manner dispose or encumber the whole or any part of the farm lot to any person not qualified to take a farm lot except by way of mortgage, testamentary bequest or devise, intestate succession, or except to a purchaser at or after sale upon the foreclosure of a mortgage.

The violation of any of such restrictions or conditions shall be sufficient for the board, upon failure of the purchaser or lessee within a reasonable period of time to remedy the default after notice thereof as provided in section 171-20 to take possession of the premises without demand or previous entry and with or without legal process and thereby determine the estate, subject to the provisions contained in section 171-21. [L 1962, c 32, pt of §2; am L 1965, c 239, §33; Supp, §103A-63; HRS §171-67; gen ch 1985]

" **§171-68 Applicants; qualifications of.** (a) A person shall be eligible to apply for a farm if the person has the qualifications as follows:

- (1) The person has been a resident in the State at any time for at least three years;
- (2) The person is a bona fide farmer:
 - (A) Who has not less than two years' experience as a full-time farmer; or
 - (B) Who was an owner-operator of an established farm conducting a substantial farming operation and who for a substantial period of the person's life resided on a farm or depended on farm income for the person's livelihood; or
 - (C) Who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the person's application obtained the major portion of the person's income from farming operations; or
 - (D) Who has a college degree in agriculture; or
 - (E) Who by reason of ability, experience, and training as a vocational trainee is likely to successfully operate a farm; or
 - (F) Who has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant

- Act as amended, or as may hereafter be amended,
for the acquisition of a farm; or
- (G) Who is displaced from employment in an agricultural production enterprise; or
 - (H) Who is a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects; or
- (3) The person meets such other qualifications as the board of land and natural resources may prescribe pursuant to section 171-6.
- (b) No person shall be entitled to apply for a farm:
- (1) Who, or whose husband or wife, has previously taken or held land for farm or homesteading under any certificate, lease, or agreement or under any homestead lease or patent based thereon; or
 - (2) Who, or whose husband or wife, or both of them, owns in fee simple other land in the State, the combined area of which with the land in question exceeds eighty acres; provided that:
 - (A) The ownership of a residence lot or tract, not exceeding three acres in area, shall not disqualify any person otherwise qualified from applying for and receiving any form of farm;
 - (B) Any person who would otherwise qualify to take a farm lot shall not be disqualified by reason of taking, holding or owning land for farm or homesteading or otherwise, if the land so taken, held or owned becomes unusable for the purpose of farming as defined in section 171-65.

(c) The terms "farm" and "farmer" as used herein also mean ranch and rancher respectively for the purposes of this section. [L 1962, c 32, pt of §2; am L 1965, c 239, §34; Supp, §103A-64; HRS §171-68; am L 1975, c 135, §2; gen ch 1985]

" **§171-69 Preference right.** Any person otherwise qualified to take a farm lot shall have preference in any drawing for farm lots, if the person:

- (1) Is a veteran (defined herein as a person who served in the military forces of the United States during any war between the United States and any other nation and who was discharged or released therefrom under conditions other than dishonorable); or
- (2) Has, within a period of not longer than five years prior to the filing of the person's application, been an owner in possession, or a lessee in possession having an unexpired lease term of more than one year,

of farm premises which were taken by any governmental authority for any public purpose and who was displaced by reason of the taking or which became unusable for farm purposes because the use was declared a public nuisance or was displaced by reason of a natural disaster. [L 1962, c 32, pt of §2; Supp, §103A-65; HRS §171-69; gen ch 1985]

"B. RESIDENTIAL LEASES

Cross References

Infrastructure development fund (Kikala-Keokea), see §171-19.5.

§171-70 Findings and declaration of necessity. It is hereby found and declared that:

- (1) There is a shortage within the State of lands suitable for residential use, available to persons whose incomes and circumstances are such that they do not qualify for or do not require publicly provided low-rent housing accommodations and who are able to secure financing for the construction of their own homes, but who are unable through lack of sufficient financial ability to purchase land in fee simple or to pay the premiums for the rentals under leases offered by private landowners;
- (2) This group includes persons whose residential property has been taken for public purposes and who, while they have received the full and fair value of their property, by purchase or condemnation, are unable to replace the property taken with the proceeds paid or other available funds because of the shortage of similar property in the community;
- (3) This group also includes those persons who are in low-rent housing accommodations and are discouraged from increasing their annual income for fear that they may forfeit their low-rent public housing;
- (4) Experience has demonstrated that when public lands are subdivided and sold in fee simple at public auction, for residential use, the demands for residential property have forced the price of such lands beyond the financial reach of the persons previously mentioned, and that neither the program of opening public lands for sale in fee simple as residence lots, nor the programs for providing low-rent public housing, for urban redevelopment or for urban renewal

are adequate or designed to provide the opportunity for such persons to provide themselves with decent, safe, sanitary, and uncongested residence accommodations consistent with their financial ability and necessary to provide the environment conducive to promoting their own and their children's good citizenship;

- (5) To alleviate this shortage of land suitable for residential use, to promote home ownership on as widespread a basis as possible, and to promote the accomplishment of the purposes of the programs for public low-rent housing, urban redevelopment and urban renewal, including the elimination of slum and other conditions detrimental to the public health, safety, and welfare, it is necessary that public lands be made available on terms within the financial means of those residents who, because of the shortage before mentioned, are unable to purchase public or private lands in fee simple or to lease private lands for use for residential purposes. Making public lands available for such purposes, pursuant to this part, is hereby declared to be a public purpose. [L 1962, c 32, pt of §2; Supp, §103A-66; HRS §171-70]

" **§171-71 Definitions.** As used in this part if not inconsistent with the context:

"Appraisers" means one or more, but not more than three, real estate appraisers appointed by the board.

"Lessee" means the lessee under a residential lease and the successors in interest of the lessee.

"Person" means one or more individuals and does not include any partnership, firm, or corporation.

"Residential lease" or "lease" means a residential lease made by the board of land and natural resources under this part. [L 1962, c 32, pt of §2; Supp, §103A-67; HRS §171-71]

Revision Note

Definitions rearranged.

" **§171-72 Subdivision, improvement and lease of public lands.** Any public land suitable for residential use, including single-family, multiple-family, apartment, cluster, and row housing and situated in a locality suitable for the general type of residential construction anticipated by the board of land and natural resources, may be subdivided and improved in accordance with this part; provided that any such lands being subdivided

for single-family residence shall be subdivided into lots of not less than five thousand square feet and not more than fifteen thousand square feet. The subdivision shall comply with appropriate county or city and county zoning and subdivision requirements; provided that the board may put in such other improvements as may be necessary or desirable. The lots in the subdivision may be leased by the board under residential leases without public auction to persons qualified thereunder, without public notice or advertising, other than as required by this part. [L 1962, c 32, pt of §2; Supp, §103A-68; HRS §171-72]

" **§171-73 Term, rent, and other conditions of residential leases.** Residential leases made by the board of land and natural resources may be for an initial term of fifty-five years with the privilege of extension to meet Federal Housing Administration requirements, provided the aggregate of the initial terms and extension shall in no event exceed seventy-five years. It may contain such terms and conditions as the board may in its discretion determine, except that the following shall in any event be complied with in each residential lease:

- (1) Rent and taxes. The annual rent shall be not less than an amount representing a fair return on the value of the premises at the inception of the rental period under the lease, which value shall be determined by appraisers. The lessee shall pay all real property taxes, assessments for the lessee's pro rata share of the costs of the improvements of the tract in which the land is located, and such other charges made against or levied upon the lessee's premises. "Value of premises" as used in this section means the fair market value of the raw land, including in such value the pro rata share of the cost of improvements only if the lessee has not already been assessed or has not already paid the lessee's pro rata share thereof or if the State has not assumed the costs.
- (2) Construction of residence. Each residential lease shall contain requirements that the lessee construct a residence upon the premises, pursuant to plans and specifications approved by the board and using a licensed contractor, within such time and having such minimum value or ground floor area as may be determined by the board in its discretion.
- (3) Use. Upon the completion of improvements upon the premises, the lessee shall use and occupy the premises as the lessee's residence and shall not rent or use for any business purposes the whole or any part of the

premises, except with the written consent of the board.

- (4) Alienation. Each residential lease shall contain conditions prohibiting the lessee from subletting or parting with the possession of the whole or any part of the premises and from selling, assigning, transferring, or otherwise disposing of or encumbering, except by way of mortgage as hereinafter permitted, any interest in the lease or any improvements erected on the premises, except with the written consent of the board.
- (5) Right of purchase. Each residential lease shall also state that no right or privilege of purchasing the fee title to the land demised shall be created by the lease, except as provided in section 171-79, notwithstanding any other provision of the law to the contrary.
- (6) Construction and mortgages. Each residential lease shall provide that the lessee may mortgage the lease and improvements only for the purpose of financing the construction of a residence upon the premises or, after the requirement of construction of a residence upon the premises has been fulfilled, for the purpose of financing the purchase of the lease and improvements. The mortgages shall be made only to recognized lending institutions and may provide for foreclosure and for sale at the foreclosure to any purchaser, without regard to whether the purchaser at the sale is qualified or disqualified to take a residential lease under this part. The mortgagee's interest in any such mortgage shall be freely assignable.
- (7) Mortgage qualification. The foregoing provisions to the contrary notwithstanding, the board is authorized from time to time, upon the issuance of any such lease to adopt or modify or eliminate any provision contained in sections 171-70 to 171-83, to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, and Veterans Administration, and their respective successors and assigns. [L 1962, c 32, pt of §2; Supp, §103A-69; HRS §171-73; gen ch 1985]

" **§171-74 Qualifications of lessees.** To qualify for a residential lease under this part, the lessee shall:

- (1) Be of legal age and have at least one person, related to the lessee by blood or marriage and solely dependent upon the lessee for support, who will occupy the premises with the lessee; provided that this requirement shall not apply to a husband and wife or to reciprocal beneficiaries who are joint lessees, even if both are employed;
- (2) Be a citizen and a resident of the State for not less than five years immediately preceding the issuance of the lease;
- (3) Have a gross income not in excess of \$20,000 a year, including the gross income of the lessee's spouse or reciprocal beneficiary. In determining gross income, the standard income tax exemption for each of the lessee's dependents, as determined by the income tax laws of the State, shall be allowed; and
- (4) Have such other qualifications as may be established by the board of land and natural resources.

Any person who, after taking a residential lease, through change or circumstances, loses the qualifications initially required of the person or becomes disqualified to take a residential lease, shall not thereby be required to surrender the person's residential lease, but shall be entitled to continue to hold the same. [L 1962, c 32, pt of §2; Supp, §103A-70; HRS §171-74; am L 1970, c 184, §5; gen ch 1985; am L 1997, c 383, §35]

" **§171-75 Persons disqualified to take residential leases.**

No person shall be qualified to take a residential lease under this part who, or whose husband or wife, or both of them:

- (1) Has previously taken from or held under the Territory or State any certificate of occupation, right of purchase lease, cash freehold agreement, special homestead agreement or homestead lease, or patent based on any of the foregoing, or has previously taken residential lease or patent or deed to any residential lot under this part; provided that a person who has previously taken from or held under the Territory or State or under this part any such certificate, lease, agreement, patent, or deed to any land shall not be disqualified, if the person has been displaced at any time from the land by governmental authority for any public purpose or by reason of any natural disaster;
- (2) Owns other land in the State suitable for residential use;

- (3) Owns other land not suitable for residential use if the value thereof exceeds the value of the residence lot applied for;
- (4) Is the lessee under a lease having an unexpired term of more than five years of other land in the State suitable for residential use and which lease does not prohibit the lessee from using the land for such purposes;
- (5) Had voluntarily sold or otherwise disposed of, within one year prior to the filing of the person's application, any land or lease described in (2), (3) and (4). [L 1962, c 32, pt of §2; Supp, §103A-71; HRS §171-75; gen ch 1985]

" **§171-76 Preference right to residential lease.** In any drawing to determine the person to whom a residential lease is to be made, preference shall be given to an otherwise qualified person, who has:

- (1) Within a period of not longer than five years prior to the filing of the person's application for a residential lease, been an owner in possession, or a lessee in possession having an unexpired lease term of more than one year, of residential premises which were taken by any governmental authority for any public purpose and who was displaced by reason of such taking; or
- (2) Been displaced by reason of any natural disaster as defined in section 171-85.

After the above preference, any person who is a citizen of the United States and who is otherwise qualified shall be given preference over non-citizens. [L 1962, c 32, pt of §2; Supp, §103A-72; HRS §171-76; gen ch 1985]

" **§171-77 Transfers of title by bequest, devise, intestate succession, or by operation of law, and upon foreclosure.**

Notwithstanding the prohibitions contained in section 171-73, title to a residential lease or to the fee of the premises if purchased by the lessee, and to the improvements upon the premises, may be transferred only by testamentary bequest or devise, intestate succession, or otherwise by operation of law. No person, corporation, or agency of government, disqualified under section 171-74 or 171-75 to take a residential lease, may succeed to and take title to a residential lease and improvements, except by such transfer or by purchasing at or after a sale upon a foreclosure of a mortgage permitted by this part.

If the lessee purchases the fee as provided in section 171-79, no person, corporation, or agency of government, disqualified under sections 171-74 and 171-75, may, without the express written consent of the board of land and natural resources, within the ten-year period following the issuance to the lessee of a patent or deed in fee simple to the premises, succeed to and take the fee title to the premises formerly leased, and improvements, except by testamentary bequest or devise, intestate succession, or otherwise by operation of law, or by purchasing at or after a sale upon the foreclosure of a mortgage permitted by this part. [L 1962, c 32, pt of §2; am L 1965, c 239, §7; Supp, §103A-73; HRS §171-77]

" **§171-78 Notice; drawing.** No residential lease shall be made unless notice of the board of land and natural resources' intention to lease, with such details concerning the intended lease and method of application for the lease as the board deems necessary or desirable, is published as provided in section 171-16(b). The person entitled to the lease shall be determined by drawing from among the qualified applicants who have submitted evidence satisfactory to the board of loan commitments, still in force, from recognized lending institutions to finance the construction of a residence upon the premises. Only those who are entitled to preference may participate in the drawing, and one of them shall be entitled to the lease of the lot offered, or if more than one lot is offered, they shall have their choice among the lots offered, according to the numbers drawn by them. If there are more lots than qualified applicants entitled to preference, those without preference may participate in the drawing after all preferred qualified applicants have made their choices. Any lease referred to in the published notice which is not taken upon the drawing may thereafter be leased to any qualified applicant for a residential lease having a loan commitment, still in force, from a recognized lending institution to finance the construction of a residence upon the premises, notwithstanding the person was not an applicant at the date of the drawing, without further publication of notice and without further drawing, if the lease is made within one year of the date of the drawing of which notice was published. [L 1962, c 32, pt of §2; Supp, §103A-74; HRS §171-78]

" **§171-79 Purchase of fee title by lessee.** At any time after the requirement of construction of a residence upon the premises has been fulfilled and after ten years from the date of the issuance of the lessee's residential lease, any residential lessee who is financially able to purchase the fee title to the premises demised to the lessee by the lessee's residential lease

may, if not in default under the terms of the lessee's lease, purchase the fee title at its fair market value determined as of the date of the exercise of the lessee's option to purchase. The fair market value shall be determined by appraisers and shall exclude the value of improvements erected by the lessee and shall be determined as if the premises were not subject to the residential lease or to any mortgage made by the lessee. The patent or deed issued upon purchase shall state that within the ten-year period following the date of issuance of the patent or deed, the land or any interest therein shall not, without the written consent of the board of land and natural resources, be sold, leased, or otherwise transferred to any person disqualified under sections 171-74 and 171-75, except that the lessee may mortgage the premises and improvements, without the board's consent, to recognized lending institutions, which mortgage may be freely assigned by the mortgagee and the fee title sold to any person or corporation or agency of government at or after foreclosure. [L 1962, c 32, pt of §2; Supp, §103A-75; HRS §171-79; gen ch 1985]

Case Notes

Fee simple interest may be purchased under §171-99(a) by payment of "fair market price", which, under this section and §171-99(a), requires appraisers to ignore both the value of improvements erected on the premises and the lease encumbrances. 85 H. 217, 941 P.2d 300.

" **§171-80 Cancellation of leases.** Whenever the board of land and natural resources has reason to believe that any term or condition of a residential lease has been violated, it shall give notice to the lessee of the suspected violation as provided in section 171-20, and shall afford the lessee an opportunity to be heard. If upon the hearing, the board finds that the lessee has violated the terms and conditions of the lease, it may declare the lessee's interest in the lease and improvements forfeited and order the premises to be vacated within a reasonable time. No such forfeiture shall, however, operate to forfeit the interest of any mortgagee in the lease and improvements, and the board shall pay from the special land and development fund the amount due upon and secured by the mortgage; provided that payment need not be made if a new lease of the premises and improvements is made to a new lessee who is willing to assume, and if the mortgagee is willing to accept the new lessee's assumption of, the mortgage and the debt secured thereby. [L 1962, c 32, pt of §2; Supp, §103A-76; HRS §171-80]

Cross References

Administrative hearing, see chapter 91.

" **§171-81 Surrender of lease.** If at any time the lessee desires to surrender the lessee's lease and improvements, the board of land and natural resources may accept the surrender and purchase the improvements for their fair market value, as determined by appraisers, with funds from the special land and development fund, provided the board has a firm offer from a person, who is qualified to take the residential lease under this part, to take the lease and purchase the improvements for not less than the amount to be paid therefor by the board and who has a commitment from a recognized lending institution to finance the purchase. Upon acceptance of the surrender and purchase of the improvements, the board shall sell the improvements to that person and make a new lease to the person. [L 1962, c 32, pt of §2; Supp, §103A-77; HRS §171-81; gen ch 1985]

" **§171-82 Approval by board.** All subdivisions of public lands and premises covered by residential leases, all purchases and sales of improvements erected by lessees upon lots under residential leases, and all purchases of the fee titles to the leasehold premises by the lessees, and all sales of such fee simple titles during the ten-year period following issuance of a patent or deed thereupon to any person not disqualified under sections 171-74 and 171-75, shall be subject to approval by the board of land and natural resources. [L 1962, c 32, pt of §2; Supp, §103A-78; HRS §171-82]

" **§171-83 Costs of, and realization from, residential leasing.** The board of land and natural resources is authorized to expend from the special land and development fund sufficient moneys to meet all costs of the planning, development, and subdivision of public lands for residential leasing, the sale of residential leases and otherwise to effectuate the purposes of this part, and all realizations from residential leases and the selling of any improvements purchased from lessees shall be paid into the fund. [L 1962, c 32, pt of §2; Supp, §103A-79; HRS §171-83]

" **§171-84 Leases to certain developers of housing for low and moderate income families.** Sections 171-73 to 171-76, or any other law to the contrary notwithstanding, residential public lands may be leased on a first priority basis, without a drawing or public auction, by the board of land and natural resources to

a developer or mortgagor who qualifies under the federal housing programs for low and moderate income families under the National Housing Act or state housing program for low and moderate income families as approved by the board of land and natural resources, or to a nonprofit or limited distribution corporation or association as defined in section 221(d)(3) of the National Housing Act which conforms to the standards of section 221(d)(3) but which is not a mortgagor under section 221(d)(3), all of which are regulated or supervised under federal or state laws or by political subdivisions of the State, or agencies thereof, as to rents, charges, sales prices, capital structure, rate of return, and methods of operation from the time of issuance of the building permit for the project. The lease under this section shall include terms to meet Federal Housing Administration requirements, if any, and the annual rental of the premises shall not exceed \$1 a year to the lessee. The subleasing of individual lots will be allowed with lessee retaining first right of purchase for resale to a qualified low and moderate income family in conformance with the board of land and natural resources requirements. [L 1967, c 278, §23; HRS §171-84; am L 1970, c 109, §1]

"C. DISPOSITION TO VICTIMS OF NATURAL DISASTER

1. DISPOSITION FOR OTHER THAN RESIDENTIAL
OR AGRICULTURAL PURPOSES

§171-85 Definitions. As used in this part III C:

"Disaster area" means an area proclaimed by the governor to be a disaster area.

"Natural disaster" means any disaster caused by seismic or tidal wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, or flood.

"Person" means an individual (citizen and noncitizen), partnership, corporation, and association. [L 1962, c 32, pt of §2; Supp, §103A-80; HRS §171-85]

Revision Note

Numeric designations deleted.

" **§171-86 Purpose.** It is the purpose of this part, in the public interest, to provide for immediate relocation and rehabilitation of disaster victims by making public lands available in the manner hereinafter provided, when a natural disaster strikes the State and devastates large tracts of lands and causes the necessity for immediate relocation of persons

from the devastated areas. [L 1962, c 32, pt of §2; Supp, §103A-81; HRS §171-86]

" **§171-87 Disposition to victims of natural disaster, when.**

Notwithstanding any law to the contrary, the board of land and natural resources may dispose of public land to victims of a natural disaster by negotiation and without recourse to public auction for purposes other than the personal residences of the victims or for agricultural purposes as hereinafter provided.

To effectuate disposition for the purpose of relocating victims onto public lands and placing them in circumstances similar to those which existed prior to the natural disaster the board shall:

- (1) Subdivide and improve public lands, including the construction of roads, in conformity with applicable county or city and county zoning and subdivision requirements and good planning;
- (2) Lease the lands at fair market rental as determined by the board, based on appraisals by at least one but not more than three disinterested appraisers, provided that the board shall waive rental for the first two years of the terms of the lease;
- (3) Limit the size of any lot leased under this part in accord with need and use, provided that such lot shall not exceed four acres of usable land;
- (4) Lease only one lot to a person eligible under this part; provided that if the person owned, leased, or occupied another lot in the devastated area which was used for a different purpose, the board may lease a maximum of two lots to the person if there is a different use for each lot;
- (5) Include in the instrument of lease, in addition to other terms and conditions, the following:
 - (A) The lessee, for the first five years of the term of the lease, shall use the leased land for the same business use or undertaking as that in which the lessee was engaged at the time of the natural disaster or for a use approved by the board;
 - (B) The lessee shall complete the construction of improvements required under the lessee's lease within one year from the commencement of the lease, unless the board extends the time of completion, and if the lessee defaults with respect to the construction of the improvements and fails to remedy or cure the default after proper notice thereof as provided in section 171-20, the board may, at its option, subject to the

- provisions of section 171-21, declare a forfeiture of all the right, title, and interest of the lessee in and to the leased land;
- (C) The lessee shall not assign, mortgage, or sublet the whole of the leasehold premises, without the prior approval of the board, provided that the lessee may sublet a part of the leasehold premises without approval of the board; and
 - (D) The lease rental shall be subject to redetermination and renegotiation during the lease term in the manner and at such intervals as the board may specify in the lease. [L 1962, c 32, pt of §2; Supp, §103A-82; HRS §171-87; gen ch 1985]

" **§171-88 Option to purchase.** Any owner in fee simple of private land in a disaster area who leases or who presently has a lease of public land under this part shall be entitled to an option to purchase in fee simple the public land so leased if the owner's private land was or is condemned or purchased for a public purpose by a governmental agency at any time between the date of the natural disaster and the date of expiration of the first two years of the term of the lease to the person.

If private land in a disaster area owned at the time of the natural disaster by a lessee under this part is not condemned or purchased for a public purpose by a governmental agency at the expiration of the first two years of the term of the lease of the lessee, the person shall be entitled to an option to purchase in fee simple the public land leased under this part, provided that the lessee first offers the board of land and natural resources a period of six months in which to exercise an option to purchase in fee simple the lessee's private land in the disaster area which the lessee held at the time of the natural disaster. The offer shall be made to the board by the lessee within thirty calendar days next following the first two years of the term of the lease of the lessee. The lessee shall then have a period of six months next following the board's rejection or exercise of its option in which to reject or exercise the lessee's option to purchase the public lands. The acquisition or purchase of the private lands in a disaster area by the board under this part is declared to be for a public purpose.

During the period that the board and the lessee are considering their respective options to purchase, the board shall waive the lease rental of the lessee.

Public land under lease shall be sold and private land of the lessee shall be purchased at fair market value as determined

by appraisal as set forth in section 171-17. The fair market value shall not include the value of improvements erected by the lessee and shall be determined as if the premises were not subject to the lease or to any mortgage made by the lessee. [L 1962, c 32, pt of §2; Supp, §103A-83; am L 1966, c 27, §2; HRS §171-88; gen ch 1985]

" **§171-89 Applications.** All applications for a lease shall be filed with the board of land and natural resources within three months after the date of the natural disaster, provided that the board may extend the time for filing applications for an additional period not to exceed three months. [L 1962, c 32, pt of §2; Supp, §103A-84; HRS §171-89]

" **§171-90 Eligibility.** Any person shall be eligible to apply for a lease under this part if the person was an owner, lessee, or tenant in actual possession of real property in a disaster area and whose business activity or undertaking, not primarily agricultural in character, was substantially destroyed or made unsuitable on or after May 22, 1960, by a natural disaster and whose property or the property on which the person is a lessee or tenant was substantially damaged on or after May 22, 1960, by a natural disaster, so as to render the property unfit or economically unfit for the purpose or use made prior to the disaster, provided that an owner or lessor not in actual possession of the owner's or lessor's property shall not be eligible unless the owner or lessor first fully releases all lessees or tenants from all obligations under the owner's or lessor's lease or agreement of tenancy.

Any owner or lessee of real property in a disaster area who was engaged in the business of renting homes or apartments shall be deemed an owner or lessee or tenant in actual possession of real property in a disaster area as provided for in this section.

Property shall be deemed unfit or economically unfit for the purpose or use made prior to the disaster when so determined by the board of land and natural resources, which determination shall be final, or if any law, ordinance, or regulation of any governmental agency prohibits the construction of improvements on land in a disaster area.

The determination by the board as to who is an eligible applicant shall be final. [L 1962, c 32, pt of §2; Supp, §103A-85; HRS §171-90; gen ch 1985]

" **§171-91 Notice of availability of leases; selection of lessees.** Notice of availability of land to be offered to qualified applicants for lease shall be by publication in

accordance with the same procedure as set forth in section 171-16(b), but limited to the county in which the land is situated. The notice shall contain, in addition to such other information as the board of land and natural resources deems proper, a reference to the qualification of applicants, a brief description of the land to be leased, its locality, area, and quality, with reference to the survey, and the date by which the applications must be filed for a lease of the land. The board shall, as soon as practicable following the closing date for applications, review the qualifications of the applicants, determine their respective needs, fix the terms, covenants, and conditions of leases to be issued, as more particularly provided in section 171-87, and, within the limits of availability of the land for which notice has been published, issue leases to selected applicants. [L 1962, c 32, pt of §2; Supp, §103A-86; HRS §171-91]

" **§171-92 Existing public leases.** Where a person has an unexpired lease, including a residential lease, of public land damaged by a natural disaster and rebuilding on such land is not prohibited, the board of land and natural resources may negotiate an extension of the lease to make it economically feasible to rebuild, or may, by mutual agreement with the lessee and the holder of record having security interest, cancel the unexpired term of the lease and negotiate a new lease with the person. [L 1962, c 32, pt of §2; Supp, §103A-87; HRS §171-92]

"2. DISPOSITION FOR RESIDENTIAL PURPOSES

Cross References

Infrastructure development fund (Kikala-Keokea), see §171-19.5.

§171-93 Authorization. The board of land and natural resources may dispose of by sale, lease, or lease with option to purchase, public land through drawing by lots and without recourse to public auction to persons dispossessed or displaced as a result of a natural disaster, as determined by proclamation of the governor, under the following terms and conditions:

- (1) The department of land and natural resources shall subdivide and improve, including roads, the land to be disposed of;
- (2) Such land shall be sold at fair market value or leased at fair market lease rental, as determined by appraisal, based on the land as improved;

- (3) The instrument of conveyance or lease shall contain, in addition to the usual terms, the restriction that the land shall be used only for residential purposes for a period of ten years following the date of the conveyance or lease, which restriction shall be a covenant running with the land and enforceable by the board or by any surrounding owner or lessee of public land that is subject to the same restriction;
- (4) If the purchaser or lessee decides to sell, lease, or sublease the land within ten years from the date of the conveyance or lease, the board shall have the first option to repurchase the interest of the purchaser or lessee at fair market value. In the event the land is acquired by the Federal Housing Administration, pursuant to a contract of mortgage insurance, or is anyway acquired by the Small Business Administration, Federal National Mortgage Association, Veterans Administration, or any bank, or savings and loan institution chartered to do business in the State or by the federal government, this restriction shall be null and void during the period of such ownership, and, to this extent, the board may waive any rights accruing to the State contained in any deed, land patent, sales agreement, or lease made pursuant to this part;
- (5) The size of any lot sold under this part shall not exceed two acres; and
- (6) A person eligible under this part may draw one lot for the person's property destroyed by natural disaster. [L 1962, c 32, pt of §2; Supp, §103A-88; HRS §171-93; gen ch 1985]

" **§171-94 Persons dispossessed or displaced.** For the purposes of this part, a person dispossessed or displaced by natural disaster means any owner of land in possession or any lessee or tenant of land in possession, who has used the property for residential purposes immediately prior to the date the property was substantially destroyed by or as a result of a natural disaster or was made unfit for such purposes by or as a result of any urban redevelopment project which resulted from a natural disaster. Property shall be deemed unfit for residence purposes when so determined by the board of land and natural resources, which determination shall be final, or if any law, ordinance, or regulation of any governmental agency prohibits the construction of improvements on land in a disaster area. [L 1962, c 32, pt of §2; am L 1963, c 177, §1; Supp, §103A-89; HRS §171-94]

"D. DISPOSITION TO GOVERNMENT AGENCIES AND PUBLIC UTILITIES

§171-95 Disposition to governments, governmental agencies, public utilities, and renewable energy producers. (a)

Notwithstanding any limitations to the contrary, the board of land and natural resources may, without public auction:

- (1) Sell public lands at such price and on such other terms and conditions as the board may deem proper to governments, including the United States, city and county, counties, other governmental agencies authorized to hold lands in fee simple and public utilities;
- (2) Lease to the governments, agencies, public utilities, and renewable energy producers public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the board may determine;
- (3) Grant licenses and easements to the governments, agencies, public utilities, and renewable energy producers on such terms and conditions as the board may determine for road, pipeline, utility, communication cable, and other rights-of-way;
- (4) Exchange public lands with the governments and agencies;
- (5) Execute quitclaim deeds to the governments and agencies, with or without consideration, releasing any claim to the property involved made upon disputed legal or equitable grounds, whenever the board in its discretion deems it beneficial to the State; and
- (6) Waive or modify building and other requirements and conditions contained in deeds, patents, sales agreements, or leases held by the governments and agencies whenever such waiver or modification is beneficial to the State.

(b) In any disposition to public utilities under this section:

- (1) The sale price or lease rental shall be no less than the value determined in accordance with section 171-17(b); provided that such sale price or lease rental may be on a nominal basis, if the board finds that such easement is required in connection with a government project;
- (2) The board shall provide that in case the land ceases to be used at any future time for the use for which the disposition was made, the board shall have the right to repurchase the land at the original sale

price or fair market value, whichever is lower, and to purchase improvements thereon at the depreciated value or fair market value, whichever is lower;

- (3) Disposition shall not be made to any public utility if the utility has suitable lands of its own;
- (4) The disposition to public utilities shall be subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both, in any regular or special session next following the date of the disposition; and
- (5) For the purposes of this section, the definition of "public utility" as defined in section 269-1 is hereby incorporated herein by reference.

(c) For the purposes of this section, "renewable energy producer" means:

- (1) Any producer or developer of electrical or thermal energy produced by wind, solar energy, hydropower, geothermal resources, landfill gas, waste-to-energy, ocean thermal energy conversion, cold seawater, wave energy, biomass, including municipal solid waste, biofuels or fuels derived from organic sources, hydrogen fuels derived primarily from renewable energy, or fuel cells where the fuel is derived primarily from renewable sources that sell all of the net power produced from the demised premises to an electric utility company regulated under chapter 269 or that sells all of the thermal energy it produces to customers of district cooling systems; provided that up to twenty-five per cent of the power produced by a renewable energy producer and sold to the utility or to district cooling system customers may be derived from fossil fuels; or
- (2) Any grower or producer of plant or animal materials used primarily for the production of biofuels or other fuels; provided that nothing herein is intended to prevent the waste product or byproduct of the plant or animal material grown or produced for the production of biofuel, other fuels, electrical energy, or thermal energy, from being used for other useful purposes. [L 1962, c 32, pt of §2; am L 1963, c 40, §§1, 2, 3; am L 1965, c 239, §35; Supp, §103A-90; HRS §171-95; am L 1983, c 179, §1; am L 2002, c 102, §1; am L 2007, c 205, §5; am L 2008, c 90, §2; am L 2016, c 220, §1]

" **[§171-95.3] Renewable energy producers; lease of public lands without public auction.** (a) The board may lease or renew

a lease of public lands to renewable energy producers, as defined in section 171-95, without public auction only pursuant to a public process that includes public notice under section 1-28.5 providing other interested renewable energy producers opportunity to participate in the process; provided that nothing in this section shall be construed to prevent the board from conducting direct negotiations; provided further that the renewable energy producer shall be required to submit as part of the proposal for the board's evaluation, as assisted by the department of business, economic development, and tourism, the following:

- (1) A timeline for completion of the project;
- (2) A description of a financial plan for project financing;
- (3) A description of the conceptual design of the project;
- (4) A description of the business concept for the project; and
- (5) A description of landscape and acreage requirements including public and private lands.

Upon completion of the board's evaluation and determination to award or not award a lease to a renewable energy producer, the board shall prepare a report outlining the reasons for the decision.

(b) A lease to a renewable energy producer under this section shall not result in the involuntary termination of a lease of public land held by an existing lessee who is currently in compliance with the terms of the lease.

(c) To inform the public prior to the lease of public land or the renewal of a lease of public land for a proposed renewable energy project under this section, the department of land and natural resources shall conduct not less than two public hearings on the island where the public land to be leased for the proposed renewable energy project is located; provided that the notice of the hearing shall be published as provided in section 1-28.5. The board shall prepare and distribute an outline of the proposals for the renewable energy project and receive testimony from interested parties and the general public at each public hearing.

(d) Any action taken by the board upon a proposal subject to this section shall take place on the island where the public land to be leased for the proposed renewable energy project is located.

(e) For any lease issued pursuant to this section, the renewable energy producer shall have the right of first refusal upon renewal of the lease. [L Sp 2009, c 19, §1]

" **§171-95.5 Lease to public charter schools.**

Notwithstanding any limitations to the contrary, the board may lease to charter schools, at nominal consideration, by direct negotiation and without recourse to public auction, public lands and buildings under the control of the department. Except as provided in this section, the terms and conditions of sections 171-33 and 171-36 shall apply. The lands and buildings leased under this section shall be used by the charter schools for educational purposes only. This section shall not apply to conversion charter schools. [L 2006, c 298, §23]

" **§171-96 Lease to foreign governments.** Notwithstanding any limitations to the contrary, the board of land and natural resources may, with the prior approval of the governor, lease public lands for consulate purposes without recourse to public auction to foreign governments. The manner of disposition and the terms and conditions thereto shall be in accordance with sections 171-33, 171-35 and 171-36. [L 1965, c 239, §31; Supp, §103A-90.1; HRS §171-96]

**"PART IV. RELATING TO EXISTING HOMESTEAD RIGHTS;
CONTINUATION THEREOF AND REMOVAL OF CERTAIN RESTRICTIONS**

§171-97 Definition. As used in this part:

"Cash freehold" means a right of possession to land under an agreement called a freehold agreement under section 73 of the Hawaiian Organic Act.

"Certificate of occupation" means an instrument preliminary to a homestead lease, giving the applicant possession of land.

"Freeholder" means a person holding land under a freehold agreement.

"Homestead lease" means a lease of land made for a term of nine hundred and ninety-nine years, under provisions of law which were repealed by section 3 of Joint Resolution 12, Session Laws of 1949, ratified by the Congress of the United States by the Act of September 1, 1950 (64 Stat. 572).

"Occupier" means a person entitled to the possession of land under a certificate of occupation. [L 1962, c 32, pt of §2; Supp, §103A-91; HRS §171-97]

" **§171-98 Release of restrictions.** It being in the public interest, all public land for which any certificate, lease, agreement, or patent has heretofore been issued imposing restrictions against alienation and forfeiture provisions prescribed by Public Law 192, 61st Congress, 2d Session, 36 Statutes at Large 444 (1910), and Public Law 234, 76th Congress, 1st Session, 53 Statutes at Large 1126 (1939), (section 73(g)

and 73(h) of the Hawaiian Organic Act), be and the same is hereby wholly released from such restrictions and provisions; provided nothing herein contained shall be construed to defeat or in any way impair the interest of any mortgagee or holder of record having a security interest or owner of vested rights in and to the public land affected by the release aforesaid. Though no form of documentation shall be required to effect the release provided by this section, the board of land and natural resources is authorized to issue to any owner of the land affected by the release, upon payment of such documentary fees as may be provided by the board, an appropriate certificate of release suitable for recording. [L 1962, c 32, pt of §2; Supp, §103A-92; HRS §171-98]

" §171-99 Continuation of rights under existing homestead leases, certificates of occupation, right of purchase leases, and cash freehold agreements.

(a) Issuance of land patents to occupier or lessee of homestead lands. A fee simple patent shall be issued to every existing occupier under a certificate of occupation issued heretofore, and to every lessee under a nine hundred and ninety-nine year homestead lease issued heretofore, of public lands, where the lands have been improved under the certificate or lease, or have been used as a place of residence by the occupier or lessee for an aggregate continuous period of not less than ten years upon payment to the board of land and natural resources of a fair market price, disregarding the value of the improvements made by the occupier or lessee, which price shall be determined by appraisal as provided for in this chapter; provided that the board may exclude from these patents areas required as roadways to other lots.

(b) Issuance of patent, lessee of right of purchase lease. The lessee of any existing right of purchase lease, at a time and under conditions that are contained in the lease, shall be entitled to a land patent from the board conveying to the lessee a fee simple title to the land described in the lessee's lease upon the payment of the fair market price of the land as determined by appraisal as provided for in this chapter; provided that the lessee has reduced to cultivation twenty-five per cent of the premises and has resided thereon not less than two years and has substantially performed all other conditions of the lessee's lease.

(c) Cash freeholds, agreement, patent, conditions. At the end of three years from the date of the payment of the first installment, the holder of a freehold agreement is entitled to a land patent for the premises described therein, if the following conditions, in addition to those set forth herein, have been substantially performed:

- (1) Payment of the balance of the purchase price in equal installments, in one, two, and three years respectively, from the date of the freehold agreement with interest annually at the rate of four per cent; provided that the freeholder may pay the installment before it is due and thereby stop the corresponding interest;
- (2) Cultivation of not less than twenty-five per cent of the area of the premises, and the planting and care of not less than an average of ten timber, shade, or fruit trees per acre, if agricultural land, at any one time before the end of the third year, or fencing in the premises if pastoral land within that time; provided that if the premises are classed as pastoral-agricultural land, the foregoing alternative conditions shall apply respectively to the two kinds of land;
- (3) Maintenance by the freeholder of the freeholder's home on the premises from the end of the first to the end of the third year;
- (4) Conditions for the prevention of waste, the planting of trees or the protection of trees growing or to be planted on the premises, or for the destruction of vegetable pests that may be on the premises or the prevention of the future introduction of pests thereon;
- (5) Payment of all taxes that may be due on account of the premises.

The holder of a freehold agreement shall allow the land agents to enter and examine the premises at all reasonable times to see that the conditions are being performed. The holder shall not assign or sublet, conditionally or otherwise, the holder's interest or any part thereof, under the freehold agreement, without the written consent of the board indorsed on the agreement; and provided further that freeholders having the whole interest in a freehold agreement, at any time when all the conditions thereof to be performed by the freeholder up to that time shall have been substantially performed, may surrender to the government the interest by delivery of the freehold agreement to the land agent, with the intention to surrender the interest clearly indorsed thereon and signed by them and duly attested. The surrender shall release the freeholders from all further duty or performance of the conditions of the instrument surrendered. But no surrender shall be permitted if any freeholders are under the age of eighteen years, unless the minors are represented by statutory guardians; and provided

further that any freeholder over the age of eighteen may assign the freeholder's interest to the freeholder's cotenants.

(d) Right of purchase lease; termination, forfeiture, or surrender. Upon the termination of a right of purchase lease by lapse of time, or upon the forfeiture or surrender of the lease or a freehold agreement, the board, in its discretion and within the limit of its authority, may open the premises or any part thereof for disposition in the manner or for the uses as provided in this chapter. Before the disposition, the fair market value thereof shall be established by appraisal. The value attributable to the improvements in the appraisal shall be paid to the surrendering lessees or freeholders, upon resale of the premises, and the director of finance shall pay the amount of the valuation upon the requisition of the board out of the funds.

(e) Transfer or assignment; certificate of occupation or homestead lease. No existing certificate of occupation or existing homestead lease, or fractional interest thereof, shall be transferable or assignable except by conveyance, devise, bequest, or intestate succession and with the prior approval of the board of land and natural resources; provided that transfer or assignment by conveyance, devise, or bequest shall be limited to a member or members of the occupier's or lessee's family or in the case of a homestead lease, to any person or persons designated as a trustee of a land trust.

For the purposes of this section:

"Family" means the spouse, reciprocal beneficiary, children, parents, siblings, grandparents, grandchildren, nieces, nephews, a parent's siblings, children of a parent's siblings, and grandchildren of a parent's siblings, of the occupier or lessee.

"Land trust" means a trust created for the purposes of managing and holding the homestead leasehold estate for the benefit of the lessee and lessee's family members. The lessee may be the trustee of the trust.

All the successors shall be subject to the performance of the unperformed conditions of the certificate of occupation or the homestead lease.

(f) Option of cotenant to compel others to buy or sell. In case two or more persons become cotenants under any existing right of purchase lease, certificate of occupation, or homestead lease by inheritance or otherwise, any one or more of the persons, less than the whole number, may file in the office of the land agent an offer to the remainder of the persons to buy their interest in the premises or to sell them their own interest therein at a stated price, according to the proportion of the respective interest in question, and may deposit with the

land agent the amount of the offered price in money, with a fee of \$10. The land agent shall thereupon notify the persons to whom the offer is made of the nature of the offer and order them to file with the land agent their answer within sixty days whether they will buy or sell according to the offer. If the persons to whom the offer is made file with the land agent within sixty days of the time of their receiving the notification, their answer stating that they will sell their interest according to the terms of the offer, the land agent shall indorse the fact of the sale with the amount of the consideration on the lease and pay to the persons the amount of the consideration deposited with the land agent according to their individual interest; and the interest of the persons shall thereupon vest in the persons making the offer. The fact of the transfer shall be properly recorded in the official records of the land agent and indorsed upon the lease held by the lessee.

If, however, the persons to whom the offer is made fail to answer within sixty days from the time of their being notified of the offer or within sixty days from the time the notice of the offer [is] mailed to their last known place or places of abode, or shall answer within sixty days that they will buy the interest of the persons making the offer on the terms offered, but fail within sixty days after the notification to deposit the amount representing the value of the interest according to the terms offered, their interest shall vest in the persons making the offer and the amount of the consideration shall be paid by the land agent of them individually or their respective representatives upon application. In such case, the fact of the transfer shall be recorded and indorsed as above provided.

In the event that any funds held by the land agent hereunder are not paid to the persons to whom properly payable, because of the inability of the land agent to locate those persons, the funds, after the expiration of one year, shall be deposited in the department of budget and finance of the State and there abide the claim of any person thereto lawfully entitled; provided that no claim to the funds shall be allowed unless the claim is made within five years after the deposit. Payment of any claim duly filed may be made if the department of budget and finance and the board concur in finding the claim valid and proper, but if the claimant fails to obtain concurrency of the department of budget and finance and the board within sixty days of the filing of the claimant's claim, the claimant may present a petition to the circuit court of the first judicial circuit in that behalf, notice whereof shall be given to the attorney general, who may appear and defend on behalf of the State, and if the court renders a judgment in

favor of the claimant, the department of budget and finance shall pay the amount due without interest.

But if the persons to whom the offer is made, within sixty days from the time of the notification, shall make answer to the land agent that they will buy the interest of the offering parties and shall deposit within sixty days with the land agent the amount required for the purpose according to the terms of the offer, the land agent shall indorse and record the fact of the sale as above provided, and pay to the offering parties the amount according to their individual interest; and the interest of the offering parties shall thereupon vest in the answering parties. In such case, the consideration money deposited by the offering parties shall be returned to them.

(g) Forfeiture; existing certificate of occupation or homestead lease. The violation of any of the conditions of any existing certificate of occupation or homestead lease shall be sufficient cause for the board, upon failure of the occupier or lessee within a reasonable period of time to remedy the default, after notice thereof in the manner provided in section 171-20, to take possession of the demised premises without demand or previous entry, with or without legal process, and thereby, subject to section 171-21, terminate the estate created.

(h) Forfeiture; cash freeholds. In the case of default in the payment of any of the installments due on any cash freehold agreement for thirty days after the installments are due, or failure of performance of any other conditions, the board may take possession of the premises, upon failure of the freeholder within a reasonable period of time to remedy the default, after notice thereof in the manner provided in section 171-20, without demand or previous entry, with or without legal process, and thereby subject to section 171-21, terminate the estate created.

(i) Mortgage of homestead leases. Whenever an existing homestead lease is mortgaged pursuant to section 171-22, the consent to mortgage from the board of land and natural resources may contain a condition exempting the lease from subsection (e) for the duration of the mortgage. [L 1962, c 32, pt of §2; am L 1963, c 114, §1; Supp, §103A-93; HRS §171-99; am L 1980, c 17, §1; am L 1981, c 15, §1; gen ch 1985; am L 1997, c 383, §36; am L 2000, c 166, §2; am L 2004, c 187, §1; am L 2013, c 236, §2]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

Case Notes

Fee simple interest may be purchased under subsection (a) by payment of "fair market price", which, under this section and §171-79, requires appraisers to ignore both the value of improvements erected on the premises and the lease encumbrances. 85 H. 217, 941 P.2d 300.

" **§171-100 Successor determination program.** (a) The office of Hawaiian affairs may establish a successor determination program to assist persons with an interest or presumed interest in a nine hundred ninety-nine-year homestead lease to determine their legal interests under the provisions of section 171-99(e).

(b) The successor determination program may provide:

- (1) Genealogy data and information;
- (2) Assistance and guidance regarding genealogy research;
- (3) Research services;
- (4) Mediation services; and
- (5) Binding and nonbinding arbitration.

(c) The arbitration program shall:

- (1) Establish a panel of persons knowledgeable in matters of genealogy who will be available as arbitrators for the arbitration program;
- (2) Within one hundred twenty days of April 24, 1995, adopt written procedures under chapter 91 for the conduct of arbitrations under this section; provided that if no such written procedures are adopted within one hundred twenty days, the commercial arbitration rules of the American Arbitration Association shall apply to the extent not inconsistent with this section until such time as other written procedures are adopted; provided further that any proceedings that are commenced under the commercial arbitration rules of the American Arbitration Association shall be completed under those rules;
- (3) Provide for notice of the arbitration proceeding in the same manner as required for a probate court determination of heirs;
- (4) Provide an opportunity for all persons claiming an interest in the subject nine hundred ninety-nine-year leasehold to participate;
- (5) Provide for binding arbitration if all participants who respond to a notice of arbitration indicate that they desire the arbitration to be binding. If any participant fails to indicate, or indicates that the participant desires nonbinding arbitration, the arbitration shall be nonbinding;

- (6) Apply section 171-99(e), to determine the legal interests of the participants in the subject nine hundred ninety-nine-year lease;
- (7) Provide a written arbitration award setting forth the legal interests of the participants in the subject nine hundred ninety-nine-year lease; and
- (8) Conduct arbitrations under and subject to chapter 658A, and subject to confirmation by the circuit court upon application of any participant in the arbitration pursuant to section 658A-22. [L 1995, c 30, §2; am L 2001, c 265, §2]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

"PART V. LANDS FOR AGRICULTURAL PURPOSES

§171-111 REPEALED. L 1986, c 222, §4.

" **§171-112 Acquisition.** The board of land and natural resources is authorized to acquire by lease, exchange, direct purchase, or eminent domain private property for disposition for agricultural purposes, including but not limited to agricultural parks. After June 30, 1986, any lands acquired for the foregoing purposes may be designated and set aside under section 171-11 to the department of agriculture upon its request for use as an agricultural park. [L 1972, c 110, pt of §2; am L 1974, c 231, pt of §3(2); am L 1986, c 222, §2]

" **§§171-113 to 116.5 REPEALED.** L 1986, c 222, §5.

" **§171-117 Public lands; agricultural park lands.** (a) Public lands may be used for agricultural parks under this part.

(b) Public lands designated or in use as agricultural parks on June 30, 1986, may be set aside under section 171-11 to the department of agriculture upon its request for use as agriculture parks. Notwithstanding any lease term to the contrary, after June 30, 1986, revenues from the rent, use, or maintenance of leased lots in agricultural parks set aside under this subsection shall be deposited into the agricultural park special fund established under section 166-10. [L 1974, c 231, pt of §3(2); am L 1986, c 222, §3]

" **§171-118 REPEALED.** L 1986, c 222, §6.

"[PART VI. ECONOMIC DEVELOPMENT]

[\$171-121] Molokai forest lands, management program established. (a) There is established in the department of land and natural resources a Molokai forest lands management program to accelerate improved management of Molokai forest lands, including improved management in the following areas:

- (1) Internal access;
- (2) Scheduling of tree harvesting; and
- (3) Scheduling of new plantings and replantings by designated areas with priority to harvesting and replanting for sustained yields of fast growing species suitable for energy production known to thrive in this State. Such new planting and replanting shall not include the use of native forest and watershed land.

(b) The board of land and natural resources shall adopt rules under chapter 91 to implement this section. [L 1983, c 250, §2]

"PART VII. INDUSTRIAL PARKS

§171-131 Definitions. For the purposes of this part:

"Eligible lessee" means a person who is:

- (1) Engaged or proposing to engage in an industrial use; and
- (2) Qualified to lease public lands under this chapter.

"Industrial park" means an area of public lands which is designated an industrial park in accordance with this part.

"Industrial use" means the manufacturing, refining, sorting, processing, storing, maintaining, or repairing of materials, substances, products, or equipment.

"Infrastructure" includes water, drainage, sewer, waste disposal, and waste treatment systems, roads, and street lighting. [L 1988, c 361, pt of §1; am L 1991, c 173, §1]

" **§171-132 Designation of industrial park.** A contiguous area of not less than five acres of public lands which is classified or otherwise determined by the board as suitable and economically feasible for industrial use may be designated as an industrial park:

- (1) By resolution adopted by the board of land and natural resources, and approved by the legislature by concurrent resolution; or
- (2) By law. [L 1988, c 361, pt of §1; am L 2002, c 139, §1]

" **[\$171-133] Authority to plan, improve, develop, operate, and maintain industrial parks.** The board shall plan, improve, develop, operate, and maintain each industrial park designated pursuant to section 171-132. The planning, improving, developing, operation, and maintenance of an industrial park shall be in accordance with this chapter. [L 1988, c 361, pt of \$1]

" **[\$171-134] Industrial park development.** (a) The department may develop an area of public lands as an industrial park. Any development shall commence after designation of the area of public lands as an industrial park in accordance with section 171-132. Planning activities for the proposed or potential designation of an industrial park may precede a designation.

(b) At the option of the board, the development of an industrial park shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivision development and improvement of land, and the construction of buildings thereon; provided that:

- (1) The board finds that the industrial park meets the minimum requirements of health and safety;
- (2) The development of the industrial park does not contravene any safety standards or tariffs approved by the public utilities commission for public utilities;
- (3) The legislative body of the county in which the industrial park is proposed to be situated approves the industrial park.
 - (A) The legislative body shall approve or disapprove the industrial park within forty-five days after the department has submitted preliminary plans and specifications for the industrial park to the legislative body. If after the forty-fifth day, an industrial park is not disapproved, it shall be deemed approved by the legislative body.
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees, on account of actions taken by them in reviewing, approving, or disapproving the plans and specifications.
 - (C) The final plans and specifications for the industrial park shall be deemed approved by the legislative body if the final plans and specifications for the industrial park do not substantially deviate from the preliminary plans and specifications. The determination that the

final plans and specifications do not substantially deviate from the preliminary plans and specifications of the industrial park shall rest with the board. The final plans and specifications for the park shall constitute the planning, zoning, building, improvement, construction, and subdivision standards for that industrial park. For the purposes of sections 501-85 and 502-17, the chairperson of the board or the responsible county official may certify maps and plans of land connected with the industrial park as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and such maps and plans shall be accepted for registration or recordation by the land court and registrar; and

- (4) The board shall assume the responsibility of all infrastructure within the industrial park, if the infrastructure developed is exempt from applicable county ordinances, charter provisions, and rules.

(c) If the board does not exercise the option under subsection (b), the board shall develop an industrial park in compliance with the statutes, ordinances, charter provisions, and rules of applicable government agencies. [L 1988, c 361, pt of §1]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§171-135 Joint venture or development agreement.** (a) An industrial park may be developed under section 171-134 by the department in partnership or under a development agreement with a federal agency, county, or private party subject to a partnership or development agreement executed by the chairperson of the board; provided that if the industrial park is to be developed in partnership or under a development agreement with a private party, the private party shall be selected in accordance with section 103D-302 or 103D-303. At a minimum, the agreement shall provide for:

- (1) A determination by the board that the partnership agreement or the development agreement is for a public purpose;
- (2) Long-term assurance that the public land within the industrial park will be utilized for industrial uses;

- (3) Final approval by the board of the plans and specifications for the industrial park;
 - (4) Exclusive authority by the board to issue leases or master leases within the industrial park; and
 - (5) Conditions to ensure a public benefit from any state funds expended for the industrial park.
- (b) Notwithstanding any other provision of law to the contrary, a partnership or development agreement entered into pursuant to subsection (a) may provide for:
- (1) The board to issue master leases within an industrial park by negotiation, without regard to the limitations provided in sections 171-16(c) and 171-59(a), to the entity that developed the industrial park or the nominee or nominees of the entity that developed the industrial park; and
 - (2) A master lease with terms and conditions upon which the master lessee may issue tenant subleases within the industrial park without the consent of the board. [L 1988, c 361, pt of §1; am L 1991, c 173, §2; am L 2002, c 139, §2]

" **§171-136 Disposition of public lands within industrial park.** The board shall dispose of economic units within an industrial park only by lease to eligible lessees or lessees engaged in commercial uses as provided under paragraph (1)(B). The leases shall be issued by the board in accordance with this chapter, subject to the following:

- (1) Only industrial uses shall be allowed on the public lands leased; provided that:
 - (A) The eligible lessee may be allowed to engage in nonindustrial uses and activities ancillary and necessary to the eligible lessee's industrial use; and
 - (B) The board may lease public lands within the industrial park for commercial uses if the uses are necessary or desirable to serve other lessees in the industrial park or their employees;
- (2) Each eligible lessee shall be subject to a development plan formulated pursuant to section 171-41 and make the improvements to the leased public lands required under the development plan; and
- (3) Each eligible lessee shall pay all assessments for improvements of infrastructure or other public or common facilities within the industrial park, if the board requires the improvements or assessments as conditions of the lease. [L 1988, c 361, pt of §1; am L 1991, c 173, §3]

" **[\$171-137] Preference.** Preference for a lease of public lands within an industrial park shall be given to an eligible lessee who is a small business. For the purpose of this section, "small business" means the same as "small business concern" under section 210-1. [L 1988, c 361, pt of §1]

" **§171-138 REPEALED.** L 2000, c 122, §2.

" **[\$171-139] Acquisition.** The board may acquire by exchange, direct purchase, or eminent domain, lands to which private persons or other public agencies hold title for designation as or inclusion in an industrial park. The acquisition of lands shall be in accordance with this chapter. [L 1988, c 361, pt of §1]

" **[\$171-140] Rules.** The board may adopt rules in accordance with chapter 91 in order to effectuate the purposes of this part. [L 1988, c 361, pt of §1]

" **§171-141 Lease for eligible permittee in industrial park.**
(a) Notwithstanding any other provision of law to the contrary:
(1) A parcel of the public lands within an industrial park which had been occupied and used under a permit on the day before the date of designation of that industrial park shall be an economic unit in that industrial park. For the purpose of this section:
(A) "Date of designation" means the effective date of the resolution or law which designates an industrial park; and
(B) "Eligible economic unit" means an economic unit referred to under this paragraph;
(2) A person with a permit to use an eligible economic unit on the day before the date of designation of that industrial park shall be given first preference to lease that unit after the date of designation if the person is an eligible lessee. For the purpose of this section, an "eligible permittee" means a person referred to under this paragraph;
(3) The board shall issue a lease to an eligible permittee for an eligible economic unit under mutually agreeable terms, conditions, and lease rent. The lease shall be issued through negotiations, without regard to the limitations set forth in section 171-16(c) and section 171-59(a). The terms, conditions, and rent under the lease shall be in conformance with this chapter, and the board shall include lease covenants in each lease

for the placement and construction of improvements in accordance with minimum standards established by applicable county building codes;

- (4) The board shall negotiate in good faith with each eligible permittee. If the board and eligible permittee cannot agree to a lease within one hundred eighty days from the date of designation, the board shall have no further obligation to negotiate with or issue a lease to the eligible permittee and may issue a lease for the eligible economic unit to another person after the one hundred eighty-day period; provided that any lease for the eligible economic unit issued subsequent to the termination of the one hundred eighty-day period shall not include terms and conditions which are less restrictive, and a lease rent which is less, than the terms, conditions, and lease rent last offered in writing by the eligible permittee and received by the board; and
- (5) The board, in lieu of issuing a lease under paragraph (3), may issue a master lease to a corporation whose members or shareholders shall be either eligible permittees or eligible sublessees of the industrial park, through negotiations and without regard to the limitations provided in section 171-16(c) and section 171-59(a). The master lease shall provide for the issuance of subleases to eligible permittees and other sublessees approved by the board, on terms and conditions approved by the board. The terms and conditions of a master lease concerning the authority to sublease shall supersede any contrary term or condition in a development agreement executed prior to the issuance of the master lease; provided that all other terms and conditions of the development agreement shall be incorporated and made a part of the master lease. All terms, conditions, and rents under the master lease and subleases shall be in conformance with this chapter, and the board shall include lease covenants in the master lease and each sublease for the placement and construction of improvements in accordance with minimum standards established by applicable county building codes. The lessee under the master lease shall assume the responsibility of administering and monitoring permittee compliance with all sublease obligations.

(b) It is the intent of the legislature that persons occupying and using under a month-to-month or revocable permit public lands which have been designated as part of an industrial

park be given the opportunity to lease the same public lands occupied and used prior to the designation. The application, construction, and interpretation of this section shall reflect this intent. [L 1988, c 361, pt of §1; am L 1991, c 173, §4; am L 2002, c 139, §3]

" **[\$171-142] Lease for lessees dislocated by condemnation proceedings.** (a) For purposes of this section:

- (1) "Dislocated lessee" means any lessee engaged in commercial or industrial uses who has been or will be displaced from private property which is acquired by the State or any county for public use by the power of eminent domain or threat thereof; and
- (2) "Eligible relocation site" means a site in an industrial park created under this chapter or on other state land, designated as an appropriate relocation site for dislocated lessees by law, or by resolution adopted by the board of land and natural resources and approved by the legislature by concurrent resolution.

(b) Notwithstanding any law to the contrary, any dislocated lessee shall have the right of first refusal to enter into a lease for an eligible relocation site.

(c) The board shall issue a lease to a dislocated lessee for an eligible relocation site under mutually agreeable terms, conditions, and lease rent. The lease shall be issued through negotiations, without regard to the limitations set forth in section 171-16(c) and section 171-59(a). The terms, conditions and rent under the lease shall be in conformance with chapter 171, and the board shall include lease covenants in each lease for the placement and construction of improvements in accordance with minimum standards established by applicable county building codes.

(d) The board shall negotiate in good faith with each dislocated lessee. If the board and dislocated lessee cannot agree to a lease within one hundred and eighty days from the date the dislocated lessee receives notice of the availability of an eligible relocation site, the board shall have no further obligation to negotiate with or issue a lease to the dislocated lessee for that economic unit, and may issue a lease for the economic unit to another person after the one hundred and eighty-day period according to the provisions of chapter 171. [L 1990, c 274, §3]

" **[\$171-143] Rate policy.** The board may:

- (1) Charge fees to eligible lessees of public lands within industrial parks in an amount sufficient to cover the costs of operation, maintenance, and debt service on

- revenue bonds and reasonable reserves, in compliance with part III of chapter 39; and
- (2) Charge eligible lessees as may be necessary to cover capital costs or other costs incurred in connection with the industrial parks. [L 1994, c 162, pt of §1]

" **[§171-144] Issuance of revenue bonds.** (a) The board may issue revenue bonds in the name of the department in such amounts as may be authorized by the legislature. Except as provided in this chapter, all revenue bonds shall be issued pursuant to part III of chapter 39 to finance, in whole or in part, the costs of construction, acquisition, or maintenance of any industrial park and to pledge or assign for the punctual payment of the revenue bonds, and interest thereon, any and all revenues derived from any industrial park or parks undertaken by the board, in an amount sufficient to pay the principal and interest of the revenue bonds as they become due, and to create and maintain reasonable reserves or sinking funds therefor. Funds of the board, not otherwise required, may be advanced to pay necessary expenses incurred in preparation for the issuance of the revenue bonds. The board may take any other appropriate action in connection with the issuance of revenue bonds.

(b) All revenue bonds issued pursuant to this chapter shall be issued in the name of the department and not in the name of the State.

(c) The board, with the approval of the governor, may designate by resolution one or more industrial parks undertaken pursuant to this chapter as an "undertaking" as defined in section 39-51 and for purposes of part III of chapter 39. [L 1994, c 162, pt of §1]

"[PART VIII.] RESTORATION OF BEACH LANDS

[§171-151] Definitions. For the purposes of this part:

"Beach lands" means all lands in the shoreline area including sand, rocky, or cobble beaches, dune systems, landward and seaward sand reserves, and all such lands subject to the natural processes of erosion and accretion. The term includes easements and rights in such land and any improvements on land.

"Beach restoration" means the placement of sand, with or without stabilizing structures, on an eroded beach from an outside source such as offshore sand deposits, streams, channels or harbor mouths, or an upland sand quarry.

"Coastal lands" means all land within the state coastal zone management area; provided that any leasing or development of public lands shall be limited to all fast lands up to one

mile mauka of the shoreline and all submerged lands. [L 1999, c 84, pt of §2]

" **[\$171-152] General powers.** (a) In carrying out its functions under this part, the board may do all things necessary, useful, and convenient in connection with the restoration of beach lands, subject to all applicable laws, and may provide any necessary assistance to any county or nongovernmental organization in the restoration of beach lands so long as the public interest is served; provided that for beach restoration on privately-owned lands, the board shall be required to obtain authorization from affected property owners.

(b) The board or the board's designee, subject to this chapter and chapters 183C and 205A, shall maintain and manage beach lands restored pursuant to this part as well as a beach restoration plan described in section 171-153, subject to available funds. [L 1999, c 84, pt of §2]

" **[\$171-153] Beach restoration plan.** The department shall prepare and, from time to time, revise plans for the restoration of beach lands of the State. These plans shall guide the board in identifying those beach lands in need of restoration which have been degraded as a result of natural or human actions and shall designate suitable coastal lands for the purpose of generating revenues to carry out the purposes of this section. In preparing these plans, the department may institute studies pertaining to the need for restoration of such lands and shall consider any plan relating to the restoration of such lands that has been prepared by any federal, state, county, or private agency or entity. The department may also institute other studies as necessary to support the development of beach restoration projects, including the development of socioeconomic profiles, environmental studies pertaining to sand source analysis, and ecological effects of beach restoration, cost-benefit analysis for project viability, and coastal engineering studies including data gathering. [L 1999, c 84, pt of §2]

" **[\$171-154] Authority to lease coastal lands.** The board, subject to this chapter, may lease public coastal lands under the board's jurisdiction for the purpose of generating revenues to be deposited into the beach restoration [special] fund. Any terms and conditions imposed by the board on the lessee shall run with the land and shall be binding on the lessee's heirs, successors, and assigns. The board may seek enforcement of such terms and conditions in any court of appropriate jurisdiction. [L 1999, c 84, pt of §2]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[\$171-155] Development of public coastal lands.** On the lands subject to this part, the board may undertake appropriate development to generate revenues for beach restoration which is consistent with this chapter and chapters 183C and 205A and other applicable laws. These revenues shall be deposited in the beach restoration [special] fund. For purposes of this section, "development" includes:

- (1) Any building or mining operation;
- (2) Any material change in use, intensity of use, or appearance of any structure or land, fast or submerged; or
- (3) The division of land into two or more parcels. [L 1999, c 84, pt of §2]

" **[\$171-156] Beach restoration special fund.** (a) There is established in the state treasury a special fund to be designated as the "beach restoration special fund" to carry out the purposes of this part. The following moneys shall be deposited into the beach restoration special fund:

- (1) Proceeds from the lease or development of public coastal lands designated pursuant to a beach restoration plan, subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959;
- (2) Proceeds from the lease of public lands pursuant to this part for an existing seawall or revetment;
- (3) Fines collected for unauthorized shoreline structures on state submerged land or conservation district land;
- (4) Appropriations made by the legislature for deposit into this fund;
- (5) Donations and contributions made by private individuals or organizations for deposit into this fund;
- (6) Fees collected for the processing of applications for coastal and beach erosion control projects; and
- (7) Grants provided by governmental agencies or any other source.

(b) The beach restoration special fund may be used by the department for one or more of the following purposes:

- (1) Planning, designing, development, or implementation of beach restoration projects pursuant to this part; and

- (2) Providing grants to the counties, nongovernmental organizations, and the University of Hawaii for the restoration of beach lands and for research or engineering studies necessary to support beach restoration projects, subject to this part. [L 1999, c 84, pt of §2]

"[PART IX. TURTLE BAY, OAHU]

Revision Note

Part heading added by revisor pursuant to §23G-15.

[\$171-171] Reimbursable general obligation bonds for conservation easement and other real property interests in Turtle Bay, Oahu. (a) The department of budget and finance shall issue reimbursable general obligation bonds for the department of land and natural resources to acquire a conservation easement and other real property interests in Turtle Bay, Oahu, for the protection, preservation, and enhancement of natural resources, while maintaining public access, as important to the State. The public shall have perpetual public access to said conservation easement. The conservation easement shall be in compliance with chapters 171 and 198. The other real property interests shall be in compliance with chapter 171.

(b) For the purpose of this section, the acquisition of the conservation easement and other real property interests shall be deemed an undertaking under chapter 39.

(c) The reimbursable general obligation bonds issued to acquire the conservation easement and other real property interests shall be payable from the transient accommodations tax revenues allocated to the Turtle Bay conservation easement special fund established by section 171-172 and from moneys from the land conservation fund. The transient accommodations tax revenues and moneys from the land conservation fund are and shall be deemed user taxes. The revenues allocated shall be deemed user taxes pursuant to chapter 39 for the undertaking.

(d) The reimbursable general obligation bonds shall be issued in accordance with chapter 39. [L 2015, c 121, pt of §2]

Cross References

Land conservation fund, see §173A-5.

" **[\$171-172] Turtle Bay conservation easement special fund.**
(a) There is established the Turtle Bay conservation easement

special fund to be administered by the department of land and natural resources.

(b) Transient accommodations tax revenues allocated to the Turtle Bay conservation easement special fund pursuant to section 237D-6.5 and moneys from the land conservation fund shall be deposited into the special fund. All interest earned on the moneys in the special fund shall be credited to the special fund.

(c) Moneys in the Turtle Bay conservation easement special fund shall be expended to reimburse the state general fund for payment of debt service on reimbursable general obligation bonds issued to acquire the conservation easement and other real property interests in Turtle Bay, Oahu.

(d) The Turtle Bay conservation easement special fund shall be exempt from the central service expenses of section 36-27 and departmental administrative expenses of section 36-30.

(e) Upon reimbursement to the state general fund of all debt service on reimbursable general obligation bonds issued to acquire the conservation easement in Turtle Bay, Oahu, any unencumbered and unexpended moneys in the Turtle Bay conservation easement special fund shall be transferred to the tourism special fund established under section 201B-11. [L 2015, c 121, pt of §2]

" **[\$171-173] Turtle Bay appraisal and due diligence.** Any appraisal and due diligence completed by the Hawaii tourism authority may be used by the department of land and natural resources for the acquisition of the Turtle Bay conservation easement and other real property interests. [L 2015, c 121, pt of §2]

" **[\$171-174] Lease of Turtle Bay lands.** Notwithstanding any law to the contrary, the board of land and natural resources may, without public auction, lease lands purchased in fee simple pursuant to section 171-171, to the grantor of the conservation easement or its successor in interest. The purpose of the lease shall be for the protection, preservation, and enhancement of natural resources, while maintaining public access. The lease rental shall be on a nominal basis, shall not exceed a term of sixty-five years, and be upon such other terms and conditions as the board may determine. [L 2015, c 121, pt of §2]