

JAN 24 2019

A BILL FOR AN ACT

RELATING TO RENTALS FOR PUBLIC LAND LEASES.

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

1 SECTION 1. The legislature finds that there are a number
2 of long-term leases of public lands originally entered into in
3 the 1940s that have expired in recent years. Some of these
4 leases were used for hotels, and significant hotel improvements
5 were constructed on the premises during the lease term. In some
6 cases, the leasehold improvements have exceeded their useful
7 life and require costly demolition in the range of \$8-10 million
8 for a single property. However, the lease forms used for these
9 leases did not require the lessee to remove the improvements at
10 the expiration of the lease term. As a result, the demolition
11 cost falls on the State unless the State can pass the cost on to
12 a future lessee who undertakes redevelopment of the land.

13 The legislature further finds that there are unimproved
14 public lands in the State's inventory that the State desires to
15 develop for resort, commercial, industrial, other business or
16 residential use. However, substantial investments in
17 infrastructure including drainage, sewer, water, electricity,
18 and other utilities will be required to facilitate development

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1 of the lands with costs in the tens of millions of dollars. The
2 State desires to pass the infrastructure and other development
3 costs of these lands on to a future lessee of the lands.

4 The legislature further finds that chapter 171, Hawaii
5 Revised Statutes, limits the amount of rent reduction or waiver
6 that a lessee of public lands can receive for redeveloping or
7 improving public lands to one year's rent for land leased for
8 resort, commercial, industrial or other business use. In many
9 cases, a rent reduction or waiver equal to one year of ground
10 rent would be an insufficient incentive to induce a developer to
11 invest in the demolition of aged improvements on and
12 redevelopment of public land, or in the provision of basic
13 infrastructure necessary to facilitate the further development
14 of unimproved public land.

15 The purpose of this Act is to authorize the board of land
16 and natural resources to approve rental reductions or waivers
17 for leases that require substantial demolition costs or
18 infrastructure improvement costs in order for the lessee to
19 utilize the premises.

20 SECTION 2. Section 171-6, Hawaii Revised Statutes, is
21 amended to read as follows:

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1 "§171-6 Powers. Except as otherwise provided by law, the
2 board of land and natural resources shall have the powers and
3 functions granted to the heads of departments and the board of
4 land and natural resources under chapter 26.

5 In addition to the foregoing, the board may:

- 6 (1) Adopt a seal;
- 7 (2) Administer oaths;
- 8 (3) Prescribe forms of instruments and documents;
- 9 (4) Adopt rules which, upon compliance with chapter 91,
10 shall have the force and effect of law;
- 11 (5) Set, charge, demand, and collect reasonable fees for
12 the preparation of documents to be issued, for the
13 surveying of public lands, and for the issuing of
14 certified copies of its government records, which
15 fees, when collected, shall be deposited into the
16 state general fund, unless otherwise specified in this
17 chapter;
- 18 (6) Establish additional restrictions, requirements, or
19 conditions, not inconsistent with those prescribed in
20 this chapter, relating to the use of particular land
21 being disposed of, the terms of sale, lease, license,

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1 or permit, and the qualifications of any person to
2 draw, bid, or negotiate for public land;
3 (7) Reduce or waive the lease rental at the beginning of
4 the lease on any lease of public land to be used for
5 any agricultural or pastoral use, or for resort,
6 commercial, industrial, or other business use where
7 the land being leased requires substantial
8 improvements to be placed thereon; provided that such
9 reduction or waiver shall not exceed two years for
10 land to be used for any agricultural or pastoral use,
11 or exceed one year for land to be used for resort,
12 commercial, industrial, or other business use;
13 provided further that, if a lease for resort,
14 commercial, industrial, other business or residential
15 purposes requires a lessee to demolish existing
16 improvements or provide basic infrastructure including
17 drainage, sewer, water, electricity, and other
18 utilities before it can make productive use of the
19 land, the board may approve a reduction or waiver of
20 lease rental up to twenty years that shall not exceed
21 the amount of the lessee's total expenditures for
22 demolition or provision of such infrastructure;

- 1 (8) Delegate to the chairperson or employees of the
2 department of land and natural resources, subject to
3 the board's control and responsibility, such powers
4 and duties as may be lawful or proper for the
5 performance of the functions vested in the board;
- 6 (9) Use arbitration under chapter 658A to settle any
7 controversy arising out of any existing or future
8 lease;
- 9 (10) Set, charge, and collect reasonable fees in an amount
10 sufficient to defray the cost of performing or
11 otherwise providing for the inspection of activities
12 permitted upon the issuance of a land license
13 involving a commercial purpose;
- 14 (11) Appoint masters or hearing officers to conduct public
15 hearings as provided by law and under such conditions
16 as the board by rules shall establish;
- 17 (12) Bring such actions as may be necessary to remove or
18 remedy encroachments upon public lands. Any person
19 causing an encroachment upon public land shall:
- 20 (A) Be fined not more than \$1,000 a day for the first
21 offense;

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- 1 (B) Be fined not less than \$1,000 nor more than
- 2 \$4,000 per day upon the second offense and
- 3 thereafter;
- 4 (C) If required by the board, restore the land to its
- 5 original condition if altered and assume the
- 6 costs thereof;
- 7 (D) Assume such costs as may result from adverse
- 8 effects from such restoration; and
- 9 (E) Be liable for administrative costs incurred by
- 10 the department and for payment of damages;
- 11 (13) Set, charge, and collect interest and a service charge
- 12 on delinquent payments due on leases, sales, or other
- 13 accounts. The rate of interest shall not exceed one
- 14 per cent a month and the service charge shall not
- 15 exceed \$50 a month for each delinquent payment;
- 16 provided that the contract shall state the interest
- 17 rate and the service charge and be signed by the party
- 18 to be charged;
- 19 (14) Set, charge, and collect additional rentals for the
- 20 unauthorized use of public lands by a lessee,
- 21 licensee, grantee, or permittee who is in violation of
- 22 any term or condition of a lease, license, easement,

1 or revocable permit, retroactive to the date of the
2 occurrence of the violation. Such amounts shall be
3 considered delinquent payments and shall be subject to
4 interest and service charges as provided in paragraph
5 (13);

6 (15) Set, charge, and collect reasonable fines for violation
7 of this chapter or any rule adopted thereunder. Any
8 person engaging in any prohibited use of public lands
9 or conducting any prohibited activity on public lands,
10 or violating any of the other provisions of this
11 chapter or any rule adopted thereunder, for which
12 violation a penalty is not otherwise provided, shall
13 be:

14 (A) Fined not more than \$5,000 per violation for a
15 first violation or a violation beyond five years
16 of the last violation; provided that, after
17 written or verbal notification from the
18 department, an additional \$1,000 per day per
19 violation may be assessed for each day in which
20 the violation persists;

21 (B) Fined not more than \$10,000 per violation for a
22 second violation within five years of the last

1 violation; provided that, after written or verbal
2 notification from the department, an additional
3 \$2,000 per day per violation may be assessed for
4 each day in which the violation persists;

5 (C) Fined not more than \$20,000 per violation for a
6 third or subsequent violation within five years
7 of the last violation; provided that, after
8 written or verbal notification from the
9 department, an additional \$4,000 per day per
10 violation may be assessed for each day in which
11 the violation persists; and

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

16 In addition to the fines, administrative costs, and
17 damages provided for hereinabove, for damage to or
18 theft of natural resources, the board may also set,
19 charge, and collect a fine that, in its discretion, is
20 appropriate considering the value of the natural
21 resource that is damaged or the subject of the theft.

22 In arriving at an appropriate fine, the board may

1 consider the market value of the natural resource
2 damaged or taken and any other factor it deems
3 appropriate, such as the loss of the natural resource
4 to its natural habitat and environment and the cost of
5 restoration or replacement. The remedies provided for
6 in this paragraph are cumulative and in addition to
7 any other remedies allowed by law.

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

14 (16) Issue revenue bonds, subject to the approval of the
15 legislature. All revenue bonds shall be issued
16 pursuant to part III of chapter 39, except as provided
17 in this chapter. All revenue bonds shall be issued in
18 the name of the department and not in the name of the
19 State. The final maturity date of the revenue bonds
20 may be any date not exceeding thirty years from the
21 date of issuance;

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1 (17) Pledge or assign all or any part of the receipts and
2 revenues of the department. The revenue bonds shall
3 be payable from and secured solely by the revenue
4 derived by the department from the industrial park or
5 parks for which the bonds are issued;

6 (18) Reimburse the state general fund for debt service on
7 general obligation bonds or reimbursable general
8 obligation bonds issued by the State for purposes of
9 this chapter;

10 (19) Notwithstanding part II of chapter 205A to the
11 contrary, plan, design, construct, operate, and
12 maintain any lands or facilities under the
13 jurisdiction of the division of boating and ocean
14 recreation of the department without the need to
15 obtain a special management area minor permit or
16 special management area use permit; and

17 (20) Do any and all things necessary to carry out its
18 purposes and exercise the powers granted in this
19 chapter."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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1 SECTION 4. This Act, upon its approval, shall take effect
2 on July 1, 2019, and shall be repealed on June 30, 2024;
3 provided that section 171-6, Hawaii Revised Statutes, shall be
4 reenacted in the form in which it read on June 30, 2019.

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INTRODUCED BY: *Gene M. Yamamoto*

7

BY REQUEST

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Report Title:

Board of Land and Natural Resources; Public Lands; Rental
Reduction of Waiver

Description:

Authorizes the Board of Land and Natural Resources to approve rental reductions or waivers for leases on public lands that require substantial demolition or infrastructure improvement costs in order for the lessee to utilize the premises.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO RENTALS FOR PUBLIC LAND LEASES.

PURPOSE: To authorize the Board of Land and Natural Resources (Board) to approve rental reductions or waivers for leases on public lands that require substantial demolition or infrastructure improvement costs in order for the lessee to utilize the premises.

MEANS: Amend section 171-6, Hawaii Revised Statutes (HRS).

JUSTIFICATION: There are a number of long-term leases of public lands originally entered into in the 1940s that have expired in recent years. Some of these leases were used for hotels, and significant hotel improvements were constructed on the premises during the lease term. In some cases, the leasehold improvements have exceeded their useful life and require costly demolition in the range of \$8-10 million for a single property. However, the lease forms used for these leases did not require the lessee to remove the improvements at the expiration of the lease term. As a result, the demolition cost falls on the State unless the State can pass the cost on to a future lessee who undertakes redevelopment of the land.

Additionally, there are unimproved public lands in the State's inventory that the State desires to develop for resort, commercial, industrial, other business or residential use. However, substantial investments in infrastructure including drainage, sewer, water, electricity and other utilities will be required to facilitate development of the lands with costs in the tens of millions of dollars. The State desires to pass the infrastructure

and other development costs of these lands on to a future lessee of the lands.

Currently, chapter 171, HRS, limits the amount of rent reduction or waiver that a lessee of public lands can receive for redeveloping or improving public lands to one year's rent for land leased for resort, commercial, industrial or other business use. In many cases, a rent reduction or waiver equal to one year of ground rent would be an insufficient incentive to induce a developer to invest in the demolition of aged improvements on and redevelopment of public land, or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public land.

This measure seeks to authorize the Board to approve a rent reduction or waiver for up to twenty years not to exceed the amount of the lessee's total expenditures for demolition of improvements or provision of infrastructure.

Impact on the public: This bill, if enacted, would provide a lessee of the Department a rent reduction or waiver for up to twenty years, in the amount of total demolition and infrastructure costs.

Impact on the department and other agencies: The most significant impact on the Department would be having a property under lease and potentially not receiving rental income for twenty years. However, given the significant costs for demolition and removal of derelict improvements as well as providing infrastructure, the Department does not have the resources to contract for such work. It is preferable to pass these obligations to a potential lessee. However, incentives must be provided in order to preserve demand for the property and make development feasible.

For example, the cost of demolition and removal of improvements at the former Uncle Billy's hotel site in Hilo have been estimated as high as \$10 million. The Department would require a capital improvement appropriation to do such work, which would compete with other funding priorities. Passing this cost on to a potential lessee without additional incentive would likely result in either no interest for the property, or at least severely limit potential lessees.

Furthermore, in the case of providing infrastructure, the private lessee will assume a cost that will increase feasibility of development. The State will receive a benefit that may extend beyond the term of the lease. As any rent discount granted under this provision would be limited to twenty years, regardless of the costs incurred, the lessee would be encouraged to find cost effective solutions to address these issues.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2019, provided that the Act shall be repealed on June 30, 2024.