

JAN 21 2022

S.B. NO. 2549

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# A BILL FOR AN ACT

RELATING TO LAND LEASES.

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

1       SECTION 1. The legislature finds that most landlords  
2       require their tenants to be in good standing, especially before  
3       renewing a lease. This includes ensuring that the tenant has  
4       met all financial, contractual, and legal obligations. Standard  
5       lease agreements also allow a landlord to terminate a lease when  
6       the tenant commits a crime on the property. Where the State  
7       leases out public lands, lessees' obligations include paying all  
8       moneys owed to the State, carrying out environmental maintenance  
9       and necessary remediations on the subject lands, and refraining  
10      from criminal activity. The legislature believes that, as a  
11      landlord, the State should ensure that all of its lessees meet  
12      these obligations, whether the lessees are private individuals,  
13      corporations, or the federal government. The legislature also  
14      believes that the State should exercise its right to terminate a  
15      lease when a lessee engages in criminal activity on the  
16      property.



1       The legislature further finds that some existing lessees of  
2 public lands are not in good standing with the State. For  
3 example, Monsanto Company has repeatedly been found guilty of  
4 criminal activity. Despite accruing more than \$20,000,000 in  
5 fines and years of probation for storing and using banned  
6 pesticides on the islands of Oahu, Maui, and Molokai, Monsanto  
7 Company still holds a lease with the State for public lands.

8       The legislature also finds that the United States  
9 Department of Defense has unmet financial and legal obligations.  
10 Pursuant to section 3 of United States Public Law 81-874, the  
11 Department of Defense is required to pay impact aid to the State  
12 to offset the financial burden on the State's public education  
13 system of non-taxable military lands and non-payment of income  
14 and general excise tax by military personnel. However,  
15 according to the department of education, in fiscal year 2019,  
16 the federal impact aid reimbursement paid to the State was only  
17 12.91 per cent of the total per-pupil cost of educating eleven  
18 thousand to fourteen thousand military students. The  
19 legislature notes that, when reimbursing tuition for federally-  
20 connected students attending approved overseas schools, the  
21 Department of Defense Education Activity office computes



1 reimbursement rates using the "full cost recovery method", in  
2 compliance with Government Accountability Office guidelines.  
3 Applying this same methodology of full cost recovery, the  
4 Department of Defense owes Hawaii approximately \$170,87,000 to  
5 \$217,238,000 for fiscal year 2019 alone.

6 The legislature finds that state revenues are largely  
7 generated through income tax and general excise tax and that  
8 these taxes are the primary sources of funding for the  
9 department of education. When Department of Defense families  
10 utilize the State's public education system without paying full,  
11 or any, income or excise taxes, and the Department of Defense  
12 does not fully reimburse the State for these students'  
13 educational costs, Hawaii residents and taxpayers effectively,  
14 and unfairly, subsidize the students' education. Over decades,  
15 this amounts to several billion dollars owed by the Department  
16 of Defense to the State for costs incurred by Hawaii's  
17 residents. Despite these moneys owed, the Department of Defense  
18 leases or controls large portions of Hawaii's public lands.

19 The legislature similarly finds that military lessees are  
20 not engaging in required maintenance and environmental  
21 protection efforts. Pursuant to a 2015 administrative order on



1 consent, the United States Navy and Defense Logistics Agency are  
2 required to safely maintain underground storage tanks at Red  
3 Hill bulk fuel storage facility. The consent order requires the  
4 Navy and Defense Logistics Agency to carry out regular  
5 inspections and repairs of the tanks and to reimburse the  
6 department of health for any costs the department incurs in  
7 overseeing compliance with the order. Recent water  
8 contamination that is thought to be traced to the Red Hill  
9 facility suggests that the underground fuel tanks have not been  
10 safely maintained, and it is unclear whether the department of  
11 health's associated costs have been reimbursed.

12 Accordingly, the purpose of this Act is to prohibit the  
13 State from leasing any public lands, or extending the lease of  
14 any public lands, to any individual, corporation, or federal  
15 agency that is not in good standing with the State or that has  
16 not met all financial, contractual, and legal obligations.

17 SECTION 2. Section 171-36, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) Except as otherwise provided, the following  
20 restrictions shall apply to all leases:

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



- 1           (2) No lease shall be for a longer term than sixty-five  
2           years, except in the case of a residential leasehold,  
3           which may provide for an initial term of fifty-five  
4           years with the privilege of extension to meet the  
5           requirements of the Federal Housing Administration,  
6           Federal National Mortgage Association, Federal Land  
7           Bank of Berkeley, Federal Intermediate Credit Bank of  
8           Berkeley, Berkeley Bank for Cooperatives, or  
9           Department of Veterans Affairs requirements; provided  
10          that the aggregate of the initial term and extension  
11          shall in no event exceed seventy-five years;
- 12          (3) No lease shall be made for any land under a lease that  
13          has more than two years to run;
- 14          (4) No lease shall be made to any ~~[person]~~ individual,  
15          corporation, or federal agency who is in arrears in  
16          the payment of taxes, rents, or other obligations owed  
17          to the State or any county;
- 18          (5) No lease shall be transferable or assignable, except  
19          by devise, bequest, or intestate succession; provided  
20          that with the approval of the board, the assignment  
21          and transfer of a lease or unit thereof may be made in



1           accordance with current industry standards, as  
2           determined by the board; provided further that prior  
3           to the approval of any assignment of lease, the board  
4           shall have the right to review and approve the  
5           consideration to be paid by the assignee and may  
6           condition its consent to the assignment of the lease  
7           on payment by the lessee of a premium based on the  
8           amount by which the consideration for the assignment,  
9           whether by cash, credit, or otherwise, exceeds the  
10          depreciated cost of improvements and trade fixtures  
11          being transferred to the assignee; provided further  
12          that with respect to state agricultural leases, in the  
13          event of foreclosure or sale, the premium, if any,  
14          shall be assessed only after the encumbrances of  
15          record and any other advances made by the holder of a  
16          security interest are paid;

- 17          (6) The lessee shall not sublet the whole or any part of  
18          the demised premises, except with the approval of the  
19          board; provided that prior to the approval, the board  
20          shall have the right to review and approve the rent to  
21          be charged to the sublessee; provided further that in



1           the case where the lessee is required to pay rent  
2           based on a percentage of its gross receipts, the  
3           receipts of the sublessee shall be included as part of  
4           the lessee's gross receipts; provided further that the  
5           board shall have the right to review and, if  
6           necessary, revise the rent of the demised premises  
7           based upon the rental rate charged to the sublessee,  
8           including the percentage rent, if applicable, and  
9           provided that the rent may not be revised downward;

10       (7) The lease shall be for a specific use or uses and  
11       shall not include waste lands, unless it is  
12       impractical to provide otherwise;

13       (8) Mineral and metallic rights and surface and ground  
14       water shall be reserved to the State; ~~[and]~~

15       (9) No lease of public lands, including submerged lands,  
16       or any extension of any lease of public lands shall be  
17       issued by the State to any person to construct, use,  
18       or maintain a sunbathing or swimming pier or to use  
19       the lands for those purposes, unless the lease, or any  
20       extension thereof, contains provisions permitting the  
21       general public to use the pier facilities on the



1 public lands and requiring that a sign or signs be  
2 placed on the pier, clearly visible to the public,  
3 that indicates the public's right to the use of the  
4 pier. The board, at the earliest practicable date,  
5 and where legally possible, shall cause all existing  
6 leases to be amended to conform to this paragraph.  
7 The term "lease", for the purposes of this paragraph,  
8 includes month-to-month rental agreements and similar  
9 tenancies[-]; and

10 (10) No lease of public lands, including submerged lands,  
11 or any extension of any lease of public lands, shall  
12 be issued by the State to any individual, corporation,  
13 or federal agency that is:

14 (A) In arrears in the payment of any moneys owed to  
15 the State, including:

16 (i) Impact aid owed to the State pursuant to  
17 section 3 of Public Law 81-874, calculated  
18 based on the full cost recovery methodology  
19 in compliance with Government Accountability  
20 Office guidelines, in an amount determined  
21 by the office of the governor;





1           (ii) Reimbursement to the State for actual costs  
2           incurred by the State pursuant to any  
3           compact of free association, in an amount  
4           determined by the office of the governor; or

5           (iii) Reimbursement to the State for the increased  
6           cost of consumer goods in Hawaii pursuant to  
7           Title 46 United States Code sections  
8           861-889, in an amount determined by the  
9           office of the governor;

10          (B) Noncompliant with any order, consent decree, or  
11          memoranda of agreement requiring the individual,  
12          corporation, or federal agency to perform  
13          environmental maintenance or remediation  
14          activities with regard to the subject public  
15          lands; or

16          (C) Convicted of a crime;  
17          provided that the board shall request and obtain  
18          certification from the office of the governor before  
19          the issuance or extension of any lease to an  
20          individual, corporation, or federal agency that the  
21          individual, corporation, or federal agency is in good



1       standing with the State pursuant to this section;  
2       provided further that, if the individual, corporation,  
3       or federal agency is not in good standing with the  
4       State, the governor shall not certify the lease or  
5       lease extension until the individual, corporation, or  
6       federal agency has remitted full payment of any unpaid  
7       balances owed to the State, carried out any required  
8       environmental maintenance or remediation activities on  
9       the subject lands, or completed any adjudicated  
10       penalties for any relevant criminal activity."

11       SECTION 3. If any existing lessee of public lands is found  
12 by the state agency managing the lease not to be in good  
13 standing with the State as of the effective date of this Act,  
14 the lessee shall have three years, or until the end of the lease  
15 term, whichever is sooner, to correct the violation, including  
16 remitting full payment of any unpaid balances owed to the State,  
17 carrying out any required environmental maintenance or  
18 remediation activities on the subject lands, or completing any  
19 adjudicated penalties for any relevant criminal activity, or the  
20 lease shall be terminated.



1           SECTION 4. This Act does not waive the right of the State  
2 to terminate a lease at any time for any other grounds  
3 identified in the lease.

4           SECTION 5. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

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

7

INTRODUCED BY: \_\_\_\_\_

*Jose Acasio*



**Report Title:**

Office of the Governor; Board of Land and Natural Resources;  
Impact Aid; Public Lands; Leases

**Description:**

Prohibits the State from leasing any public lands to any individual, corporation, or federal agency who is in arrears in the payment of taxes, rents, or other obligations owed to the State or any county. Prohibits the State from leasing any public lands, or extending the lease of any public lands, to any individual, corporation, or federal agency that is in arrears in the payment of certain moneys to the State, noncompliant with a consent decree or memoranda of agreement with the State that requires environmental maintenance or remediation with regard to the subject public lands, or convicted of a crime. Requires certification by the Office of the Governor before the issuance or extension of any federal lease that the individual, corporation, or federal agency is in good standing with the State. Provides that, if any existing lessee of public lands is found by the state agency managing the lease not to be in good standing with the State as of the effective date of this Act, the lessee shall have 3 years, or until the end of the lease term, whichever is sooner, to correct the violation or the lease shall be terminated.

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