

JAN 20 2023

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 PART I

2 SECTION 1. The legislature finds that Article XI, section
3 1 of the state constitution provides that "[f]or the benefit of
4 present and future generations, the State and its political
5 subdivisions shall conserve and protect Hawaii's natural beauty
6 and all natural resources, including land, water, air, minerals,
7 and energy sources, and shall promote the development and
8 utilization of these resources in a manner consistent with their
9 conservation and in furtherance of the self-sufficiency of the
10 State. All public natural resources are held in trust by the
11 State for the benefit of the people". The legislature believes
12 that all public lands should be managed in the spirit of malama
13 aina.

14 The legislature further finds that the United States
15 military's use of public land has been inconsistent with the
16 principle of malama aina. The legacy of Kahoolawe, Waikane,
17 Makua, and Pohakuloa are tragic. On Kahoolawe, the United



1 States Navy failed to clear unexploded ordnance. Regarding
2 Makua, a federal court concluded that the United States Army
3 "failed to use good faith efforts to develop a plan and secure
4 funding for clearing [unexploded ordnance] from the high
5 priority sites that the Army was supposed to identify" pursuant
6 to a settlement agreement. According to a state circuit court,
7 portions of state land at Pohakuloa are heavily contaminated on
8 the surface with material that potentially presents an explosive
9 hazard and creates a significant danger to public health and
10 welfare.

11 The legislature also finds that the United State military's
12 sixty-five year leases of certain state lands are due to expire
13 soon and believes it is time to return those lands to the people
14 of Hawaii.

15 Accordingly, the purpose of this part is to prohibit any
16 land disposition to the United States military that allows for
17 or facilitates any military training activities.

18 SECTION 2. Section 171-33, Hawaii Revised Statutes, is
19 amended to read as follows:



1 "**§171-33 Planning; generally.** (a) Prior to any notice of
2 intended disposition, the board of land and natural resources
3 shall:

4 (1) Classify the land according to its use or uses as
5 provided in this chapter;

6 (2) Determine the specific use or uses for which the
7 disposition is intended;

8 (3) Parcel land into units of minimum size areas related
9 to the intended specific use or uses and sufficient
10 for an economic operation, hereinafter called an
11 "economic unit";

12 (4) Determine the requirements for the construction of
13 building or other improvements, which are necessary or
14 desirable to encourage the highest use of the land;

15 (5) Determine the upset price or lease rental, based upon
16 the fair market value of the land employed to the
17 specific use or uses for which the disposition is
18 being made, with due consideration for all of the
19 terms and conditions of the disposition;

20 (6) Determine the necessary conditions of disposition
21 which will discourage speculation;



- 1 (7) In the case of leases, determine the minimum tenure
- 2 necessary to support the intended use or uses and the
- 3 necessity for periodic rent openings in long-term
- 4 leases to assure the State a fair return;
- 5 (8) Prepare the proposed documents and make them available
- 6 for public inspection; and
- 7 (9) Determine, two years before the expiration of the term
- 8 of any lease, whether the premises are to be demised
- 9 for the same use or uses under a new lease or whether
- 10 all or any part thereof is to be reserved for other
- 11 use or uses and then promptly notify the lessee of the
- 12 determination.

13 (b) Effective July 1, 2023, the board of land and natural
14 resources shall not approve any land disposition or renew any
15 land disposition to the United States military that allows for
16 or facilitates any military training activities on the subject
17 lands."

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

20 "(a) A lease of public land may be disposed of through
21 negotiation upon a finding by the board of land and natural



1 resources that the public interest demands it. Where the public
2 land is being sought under this section by a sugar or pineapple
3 company, and the company is the owner or operator of a mill or
4 cannery, then, for the purposes of this section, the economic
5 unit shall be that acreage of public land which when taken
6 together with the lands already owned or controlled or available
7 to the company, when cultivated is found by the board to be
8 necessary for the company's optimum mill or cannery operation.
9 In all other cases, public land to be sold under this section
10 shall be an economic unit as provided in section [~~171-33(3).~~]
11 171-33(a)(3).

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

14 (1) Give public notice as in public auction, in accordance
15 with the procedure set forth in section 171-16(a), of
16 its intention to lease public land through negotiation
17 setting forth the minimum conditions thereunder, the
18 use for which the public land will be leased. Any
19 person interested in securing the lease shall file an
20 application with the board not later than forty-five
21 days after the first publication of the notice;



1 (2) Establish reasonable criteria for the selection of the
2 lessee; provided that where the intended use of the
3 land is agriculture, the department of agriculture
4 shall establish the criteria; and

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

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



1 SECTION 5. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 LEASES OF PUBLIC LANDS BY THE UNITED STATES MILITARY

6 § -1 Lease provisions. (a) Any lease of public lands,
7 or any extension of any lease of public lands issued by the
8 State to the United States Department of Defense or any branch
9 of the United States military that occurs prior to July 1, 2024,
10 shall include provisions acknowledging that the State and its
11 political subdivisions shall retain authority over all
12 environmental matters within the State's jurisdiction with
13 regard to the subject public lands, including any military
14 facilities constructed on the lands.

15 (b) The lease or lease extension shall also include
16 provisions recognizing the State's authority over, and right to
17 intervene in, all matters affecting the health and safety of the
18 State's residents.

19 (c) The lease or lease extension shall expressly provide
20 that violation of state or federal environmental law, or any
21 law, rule, or order on a matter affecting the health and safety



1 of the State's residents, shall be grounds for terminating the
2 lease.

3 (d) Rents charged for all leases of public lands issued to
4 or extended with the United States Department of Defense or any
5 branch of the United States military shall be set at the fair
6 market value of the leased lands.

7 **§ -2 Leases and lease extensions.** No lease of public
8 lands, or any extension of any lease of public lands that occurs
9 after the effective date of this Act, shall be issued by the
10 State to the United States Department of Defense or any branch
11 of the United States military if the department or branch is
12 noncompliant with any order, consent decree, or memoranda of
13 agreement requiring the department or branch to perform
14 environmental maintenance or remediation activities with regard
15 to the subject public lands or any law, rule, or order on a
16 matter affecting the health and safety of the State's
17 residents."

18 PART III

19 SECTION 6. (a) The board of land and natural resources
20 shall submit a request to the United States Department of
21 Defense to add the requirements set forth in section 5 of this



1 Act to all current leases of state public lands issued to the
2 United States Department of Defense or any branch of the United
3 States military. The request shall also include an alternative
4 option that the United States Department of Defense or the
5 applicable branch of the United States military agree to remove
6 all hazards from the leased lands and conduct other remediation
7 and restoration services necessary to make those lands suitable
8 for agriculture, residential use, and human habitation before
9 the end of the lease term.

10 (b) The board of land and natural resources shall submit
11 reports to the legislature no later than twenty days prior to
12 the convening of the 2023 and 2024 regular sessions on the
13 status of the request and any related negotiations.

14 PART IV

15 SECTION 7. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 8. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 9. This Act shall take effect upon its approval.

2

INTRODUCED BY: *Kurt Favelle*



S.B. NO. 620

Report Title:

DOD; DLNR; United States Military; Leases; Lease Extensions; Prohibitions; Public Lands

Description:

Prohibits the Department of Land and Natural Resources from approving any land disposition to the United States military that allows for or facilitates any military training activities on the subject lands. Requires that any lease or lease extension between the State and the US Department of Defense or branches of the US military include certain provisions, including an acknowledgement that the State retains authority over all environmental matters within its jurisdiction. Provides that violation of state or federal environmental law, or any law, rule, or order on a matter affecting the health and safety of the State's residents, shall be grounds for terminating the lease. Prohibits the State from leasing public lands to or extending the lease of the US Department of Defense or any branch of the US military if the department or branch is noncompliant with any environmental order, consent decree, or memoranda of agreement, or any law, rule, or order on a matter affecting residents' health and safety. Requires Department of Land and Natural Resources to request that the military agree to remediation of existing leased lands prior to the end of the lease term.

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