

JAN 20 2023

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. Chapter 171, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§171- Renewal of leases; public auction required. (a)

5 Subject to any other law or agreement to the contrary, within
6 three years before the termination date of each lease, the board
7 shall dispose of the land by public auction as provided in this
8 chapter. The auction upset price shall be the greater of the
9 current rent or the fair market rent pursuant to
10 section 171-17(d) based upon the appraised value of the land and
11 any improvements to the land that existed as of the date of the
12 written request.

13 (b) The current lessee may bid on a new lease at the
14 public auction. The current lessee's business plan shall be
15 deemed acceptable to the board and the current lessee shall not
16 be required to submit a new business plan; provided that the
17 current lessee is in compliance with the terms of the existing



1 lease and has submitted a business plan prior to the date of the
2 auction.

3 (c) Lease terms for any new lease executed pursuant to
4 this section shall be determined by the board and shall:

5 (1) Not commence prior to the termination of the current
6 lease;

7 (2) Establish the rent at no less than the greater of the
8 current rent or the fair market rent pursuant to
9 section 171-17(d) based upon the appraised value of
10 the land and any improvements to the land that existed
11 as of the date of the written request;

12 (3) If the lease is awarded after public auction to any
13 person other than the current lessee, include a
14 premium equal to the value of any improvements to the
15 land made after the date of the written request in
16 subsection (a), which shall be paid to the current
17 lessee prior to transfer of the land and improvements
18 to the new lessee; and

19 (4) Include the previously submitted business plan.

20 (d) Unless specifically required to do so by the board,
21 the current lessee shall not be required to remove improvements



1 or restore the land to a vacant condition at the expiration of
2 the lease; provided that, without prejudice to any other rights
3 or remedies that the current lessee or State may have, this
4 subsection shall not alter any obligation of a current lessee to
5 indemnify, defend, and hold the State harmless from any claims
6 regarding pollution or contamination of the land with
7 potentially hazardous substances.

8 (e) As used in this section, "improvements" means all
9 physical improvements constructed, owned, or constructed and
10 owned by the lessee during the lease term and shall exclude all
11 infrastructure constructed, owned, or constructed and owned by
12 third parties, such as water and sewer pipes, electricity and
13 telephone lines and cables, or other infrastructure."

14 SECTION 2. Section 171-36.5, Hawaii Revised Statutes, is
15 repealed.

16 ~~["~~§171-36.5~~ Commercial, industrial, resort, mixed use,~~

17 ~~or government leases, extension of term. (a) Notwithstanding~~

18 ~~section 171-36, for leases that have not been assigned or~~

19 ~~transferred within ten years prior to receipt of an application~~

20 ~~for a lease extension submitted pursuant to this section, the~~

21 ~~board may extend the rental period of a lease of public lands~~



1 ~~for commercial use, industrial use, resort use, mixed use, or~~
2 ~~government use upon the board's approval of a development~~
3 ~~agreement proposed by the lessee or by the lessee and developer~~
4 ~~to make substantial improvements to the existing improvements.~~
5 ~~For the purposes of this subsection, "assigned or transferred"~~
6 ~~shall not include:~~

7 ~~(1) A sale or change in ownership of a lessee that is a~~
8 ~~company or entity; or~~

9 ~~(2) A collateral assignment of lease or other security~~
10 ~~granted to a leasehold mortgagee in connection with~~
11 ~~leasehold financing by a lessee.~~

12 ~~(b) Before entering into a development agreement, the~~
13 ~~lessee or the lessee and developer shall submit to the board the~~
14 ~~plans and specifications for the total development proposed.~~
15 ~~The board shall review the plans and specifications and~~
16 ~~determine:~~

17 ~~(1) Whether the development proposed in the development~~
18 ~~agreement is of sufficient worth and value to justify~~
19 ~~the extension of the lease;~~



1 ~~(2) The estimated period of time necessary to complete the~~
2 ~~improvements and expected date of completion of the~~
3 ~~improvements; and~~

4 ~~(3) The minimum revised annual rent based on the fair~~
5 ~~market value of the lands to be developed, as~~
6 ~~determined by an appraiser for the board and, if~~
7 ~~deemed appropriate by an appraiser, the appropriate~~
8 ~~percentage of rent where gross receipts exceed a~~
9 ~~specified amount.~~

10 ~~No lease extension shall be approved until the board and~~
11 ~~the lessee or the lessee and developer mutually agree to the~~
12 ~~terms and conditions of the development agreement.~~

13 ~~(c) No construction shall commence until the lessee or the~~
14 ~~lessee and developer have filed with the board a sufficient bond~~
15 ~~conditioned upon the full and faithful performance of all the~~
16 ~~terms and conditions of the development agreement.~~

17 ~~(d) Any extension of a lease pursuant to this section~~
18 ~~shall be based upon the substantial improvements to be made and~~
19 ~~shall be for a period no longer than forty years. No lease~~
20 ~~shall be transferable or assignable throughout the first ten~~
21 ~~years of the extended term, except by devise, bequest, intestate~~



1 ~~succession, a collateral assignment of lease or other security~~
2 ~~granted to a leasehold mortgagee in connection with leasehold~~
3 ~~financing by a lessee, a change in direct ownership of less than~~
4 ~~fifty per cent of a lessee that is a company or entity, a change~~
5 ~~in indirect ownership of a lessee that is a company or entity,~~
6 ~~or by operation of law. The prohibition on assignments and~~
7 ~~transfer of leases shall include a prohibition on conveyances of~~
8 ~~leases. During subsequent periods of the extended term of the~~
9 ~~lease, the lease may be assigned or transferred, subject to~~
10 ~~approval by the board.~~

11 ~~(e) The applicant for a lease extension shall pay all~~
12 ~~costs and expenses incurred by the department in connection with~~
13 ~~processing, analyzing, or negotiating any lease extension~~
14 ~~request, lease document, or development agreement under this~~
15 ~~section.~~

16 ~~(f) As used in this section:~~

17 ~~"Government use" means a development undertaken under a~~
18 ~~lease held by any agency or department of the State or its~~
19 ~~political subdivisions other than the University of Hawaii or~~
20 ~~any department, agency, or administratively attached entity of~~
21 ~~the University of Hawaii system.~~



1 ~~"Mixed use" means a development that combines two or more~~
2 ~~of the following uses in a single project: commercial use,~~
3 ~~resort use, multifamily residential use, or government use.~~

4 ~~"Resort use" means a development that:~~

- 5 ~~(1) Provides transient accommodations as defined in~~
6 ~~section 237D-1 and related services, which may include~~
7 ~~a front desk, housekeeping, food and beverage, room~~
8 ~~service, and other services customarily associated~~
9 ~~with transient accommodations; and~~
- 10 ~~(2) Where at least seventy five per cent of the living or~~
11 ~~sleeping quarters are used solely for transient~~
12 ~~accommodations for the term of any lease extension.~~

13 ~~"Substantial improvements" means any renovation,~~
14 ~~rehabilitation, reconstruction, or construction of existing~~
15 ~~improvements, including minimum requirements for off site and~~
16 ~~on-site improvements, the cost of which equals or exceeds thirty~~
17 ~~per cent of the market value of the existing improvements, that~~
18 ~~the lessee or the lessee and developer installs, constructs, and~~
19 ~~completes by the date of completion of the total development."]~~

20 SECTION 3. Section 171-41.6, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§171-41.6 Lessees within the last ten years of their~~
2 ~~lease terms; requests for interest. (a) Notwithstanding any~~
3 ~~other provision of law to the contrary, and except as otherwise~~
4 ~~provided in section 171-36(b), (c), and (e) and section 171-193,~~
5 ~~a lessee of public land that is classified as commercial and~~
6 ~~industrial use pursuant to section 171-10 and that is subject to~~
7 ~~the management, administration, or control of the board may~~
8 ~~submit, during the last ten years of the term of the original~~
9 ~~lease, a written request to the board to initiate a request for~~
10 ~~interest process as provided in this section.~~

11 ~~(b) Within one hundred eighty days of a lessee's written~~
12 ~~request to initiate a request for interest, the board shall:~~

13 ~~(1) Appraise the value of the land and any improvements to~~
14 ~~the land that existed as of the date of the written~~
15 ~~request pursuant to section 171-17(a) and require the~~
16 ~~awardee of a new lease executed pursuant to this~~
17 ~~section to reimburse the department for the appraisal;~~

18 ~~(2) Publish a request for interest and request for~~
19 ~~qualifications notice inviting persons to express~~
20 ~~their interest in leasing the land and their~~
21 ~~qualifications as potential lessees and describing any~~



1 ~~improvements to the land that exist as of the date of~~
2 ~~the written request. The notice shall be given at~~
3 ~~least once statewide and at least once in the county~~
4 ~~where the land is located and shall contain:~~

5 ~~(A) The qualifications required of eligible lessees;~~

6 ~~(B) A general description of the land, including the~~
7 ~~address and tax map key, and of any improvements~~
8 ~~to the land that existed as of the date of the~~
9 ~~written request;~~

10 ~~(C) That the land to be leased is classified as~~
11 ~~commercial and industrial use pursuant to section~~
12 ~~171-10;~~

13 ~~(D) The appraised value of the land and of any~~
14 ~~improvements to the land that existed as of the~~
15 ~~date of the written request;~~

16 ~~(E) The closing date and manner by which a person~~
17 ~~shall indicate interest and submit a statement of~~
18 ~~qualifications; and~~

19 ~~(F) Notice that a business plan is a prerequisite to~~
20 ~~participate at time of auction or direct~~



1 ~~negotiation, if applicable, and shall be made a~~
2 ~~term of the lease.~~

3 ~~(c) Within ninety days after the closing date specified in~~
4 ~~the notice, the board shall determine if any persons have~~
5 ~~qualified under the terms of the request for qualifications and~~
6 ~~shall notify all persons who expressed interest as to whether~~
7 ~~they qualified. The board shall also notify the current lessee~~
8 ~~as to whether any other persons qualified.~~

9 ~~(d) The board shall enter into direct negotiation with the~~
10 ~~current lessee immediately upon notification if no other~~
11 ~~qualified persons have expressed interest in the property.~~

12 ~~(e) If the land is not leased pursuant to subsection (d)~~
13 ~~within three years before the termination date of the lease, the~~
14 ~~board shall dispose of the land by public auction as provided in~~
15 ~~this chapter, provided that the board has determined that at~~
16 ~~least one person, who:~~

- 17 ~~(1) Is not the current lessee;~~
18 ~~(2) Has been determined by the board to be qualified; and~~
19 ~~(3) Has submitted a business plan prior to the date of the~~
20 ~~auction,~~



1 ~~has expressed interest in leasing the land and any improvements~~
2 ~~to the land that existed as of the date of the written request~~
3 ~~in subsection (a). The auction upset price shall be the greater~~
4 ~~of the current rent or the fair market rent pursuant to section~~
5 ~~171 17(d) based upon the appraised value of the land and any~~
6 ~~improvements to the land that existed as of the date of the~~
7 ~~written request.~~

8 ~~The current lessee may bid on a new lease at the public~~
9 ~~auction. The current lessee's business plan shall be deemed~~
10 ~~acceptable to the board and the current lessee shall not be~~
11 ~~required to submit a new business plan; provided that the~~
12 ~~current lessee is in compliance with the terms of the existing~~
13 ~~lease and has submitted a business plan prior to the date of the~~
14 ~~auction.~~

15 ~~(f) Lease terms for any new lease executed pursuant to~~
16 ~~this section shall be determined by the board and shall:~~

17 ~~(1) Not commence prior to the termination of the current~~
18 ~~lease;~~

19 ~~(2) Establish the rent at no less than the greater of the~~
20 ~~current rent or the fair market rent pursuant to~~
21 ~~section 171 17(d) based upon the appraised value of~~



1 ~~the land and any improvements to the land that existed~~
2 ~~as of the date of the written request;~~

3 ~~(3) If the lease is awarded after public auction to any~~
4 ~~person other than the current lessee, include a~~
5 ~~premium equal to the value of any improvements to the~~
6 ~~land made after the date of the written request in~~
7 ~~subsection (a), which shall be paid to the current~~
8 ~~lessee prior to transfer of the land and improvements~~
9 ~~to the new lessee; and~~

10 ~~(4) Include the previously submitted business plan.~~

11 ~~(g) Unless specifically required to do so by the board,~~
12 ~~the current lessee shall not be required to remove improvements~~
13 ~~or restore the land to a vacant condition at the expiration of~~
14 ~~the lease; provided that, without prejudice to any other rights~~
15 ~~or remedies that the current lessee or State may have, this~~
16 ~~subsection shall not alter any obligation of a current lessee to~~
17 ~~indemnify, defend, and hold the State harmless from any claims~~
18 ~~regarding pollution or contamination of the land with~~
19 ~~potentially hazardous substances.~~

20 ~~(h) This section shall not apply to:~~



1 ~~(1) Any lessee who is in arrears in the payment of taxes,~~
2 ~~rents, or other obligations owing to the State or any~~
3 ~~county or who has had, during the five years preceding~~
4 ~~the anticipated disposition of the public land at a~~
5 ~~public auction or direct negotiation, a sale, lease,~~
6 ~~license, permit, or easement covering other public~~
7 ~~lands canceled for failure to satisfy the terms and~~
8 ~~conditions thereof; or~~

9 ~~(2) Any lease that is subject to cancellation for failure~~
10 ~~to satisfy the terms or conditions of a lease,~~
11 ~~license, permit, or easement covering the public~~
12 ~~lands.~~

13 ~~(i) As used in this section, "improvements" means all~~
14 ~~physical improvements constructed, owned, or constructed and~~
15 ~~owned by the lessee during the lease term and shall exclude all~~
16 ~~infrastructure constructed, owned, or constructed and owned by~~
17 ~~third parties, such as water and sewer pipes, electricity and~~
18 ~~telephone lines and cables, or other infrastructure."]~~

19 SECTION 4. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



S.B. NO. 622

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

3 SECTION 6. This Act shall take effect upon its approval;
4 provided that section 171-41.6, Hawaii Revised Statutes, shall
5 not be reenacted on June 30, 2028, pursuant to Act 149, Session
6 Laws of Hawaii 2018.

7

INTRODUCED BY: *Kurt Fella*



S.B. NO. 622

Report Title:

Public Lands; Negotiation; Public Auction

Description:

Requires that all lease extensions for public lands be subject to public auction.

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

