

ACT 52

H.B. NO. 731

A Bill for an Act Relating to Land Acquisition Policies for Federally Assisted Programs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 113-5, Hawaii Revised Statutes, is amended to read as follows:

“[[§113-5]] Policy provisions. In acquiring real property for any project or program in which federal or federal-aid funds are used, the State shall comply with the following policies:

- (1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.
- (2) Real property shall be appraised before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property[.]; provided that the State may proceed without an appraisal in cases involving the donation of property or the voluntary conveyance of property for nominal value or where the property has fair market value of \$2,500 or less.
- (3) Before the initiation of negotiations for real property, an amount shall be established which is reasonably believed to be just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property.
- (4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the state court, in accordance with applicable law, for the benefit of the owner an amount not less than the approved appraisal of the fair market value of such property, or the amount of the judgment in the condemnation proceeding involving the property.
- (5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move the person's business or farm operation without at least ninety days' written notice from the date by which such move is required.
- (6) If an owner or tenant is permitted, on a rental basis, to occupy the real property acquired for a short term or for a period subject to termination by the State on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.
- (7) In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.
- (8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The State shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.
- (9) [If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.] If the acquisition would leave the owner with an

- uneconomic remnant, the State shall offer to acquire that remnant. For the purposes of this section, an “uneconomic remnant” is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property and which the State has determined to have little or no value or utility to the owner.
- (10) All buildings, structures, or other improvements which must be removed or which are adversely affected by the use to which the real property acquired will be put, shall be acquired.
- (11) Notwithstanding the obligation of a tenant or lessee, as owner, to remove a building, structure or other improvement at the expiration of the tenant’s or lessee’s term, just compensation shall be paid to the owner for the taking of such building, structure or other improvement, just compensation being the value which such building, structure or other improvement contributes to the fair market value of the real property, or the fair market value of such building, structure, or improvement alone, whichever is the greater; provided that payment for such buildings, structures or other improvements shall not result in duplication of payments unless otherwise authorized by state law; and provided further that no such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. Nothing herein shall be construed to deprive the tenant of the tenant’s right to reject the proffered payment and to seek compensation for the tenant’s property interest through other laws of the State.
- (12) After the owner is fully informed of the owner’s right to receive just compensation for property being acquired under this chapter, the owner may donate such property, any part thereof, any interest therein, or any compensation to be paid therefor to the State.
- (13) The term “State”, as used in this chapter, means the State of Hawaii and any department, agency, or instrumentality of the State, or a political subdivision of the State.
- (14) The term “appraisal” means a written statement, independently and impartially prepared by a qualified appraiser who meets qualification criteria established by the State, setting forth an opinion of the fair market value of adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1989.)