

ACT 272

S.B. NO. 1303

A Bill for an Act Relating to Public Lands.

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

PART I

SECTION 1. The legislature finds that Act 155, Session Laws of Hawaii 2013 (Act 155), was approved by the governor on June 21, 2013. The purpose of Act 155 was to optimize the use of public school lands to generate opportunities to improve public school facilities and infrastructure to meet the challenges of the twenty-first century and to improve the overall quality of education in Hawaii. In particular, Act 155 established a pilot program to generate revenue from uses of public school lands for public purposes, such as workforce housing, to build and retrofit twenty-first century schools and create more school-centered communities. The pilot program laid important groundwork for a statewide approach and plan to optimize the use of public school lands and modernize public school facilities.

Pursuant to subsequent discussions with government agencies and private developers, the legislature finds that the existing fifty-five-year lease term allowed in Act 155 would be problematic in financing redevelopment projects. Also, the department of education has been working closely with the Hawaii housing finance and development corporation for assistance in the implementation of redevelopment projects on department of education-controlled lands. The Hawaii housing finance and development corporation is pursuing ninety-nine-year leasehold condominiums for some of their housing projects on state-owned lands. Extending the lease terms for redevelopment under Act 155 would allow prospective developers flexibility in securing financing, as well as ensure a better long-term return to the State for the use of its lands.

The purpose of this part is to allow the department of education to lease public school lands for a term of not more than ninety-nine years per lease to provide prospective developers flexibility in securing financing.

SECTION 2. Section 302A-1151.1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding sections 171-13 and 302A-1151, or any other law to the contrary, the department may lease public school land on terms it deems appropriate, including a leaseback of all or a portion of the improvements constructed; provided that:

- (1) The board may identify and select up to five public school land sites as candidates for participation in the pilot program; provided that:
 - (A) During the identification and selection process, the board shall be subject to chapter 92, shall hold at least one public meeting in each affected community, and shall foster school and community participation; and
 - (B) If the site is on land owned by the county, the department shall consult with the county;
- (2) The department may lease public school land for no more than three public school land sites identified and selected by the board pursuant to paragraph (1) under leases for a term of not more than ~~[fifty-five years per lease, unless extended pursuant to section 171-36,]~~ ninety-nine years per lease, to lessees who shall be required to modify, construct, or utilize facilities to benefit public educational

- purposes, in accordance with specific request for proposal or request for information guidelines;
- (3) Each lease shall stipulate that the lessee may retain any revenue generated from the facilities; provided that:
 - (A) The lessee shall be obligated to maintain and operate the facilities to benefit public educational purposes for the length of the lease;
 - (B) The lessee shall be obligated to pay to the county all applicable property tax on the value of any improvements;
 - (C) A leasehold premium may be charged to the lessee for the right to use the public school land based on a competitive process that complies with applicable sections of chapter 103D;
 - (D) Upon the expiration of the lease, the facilities shall revert to the department; and
 - (E) All revenues and proceeds derived by the State under this section shall be deposited in the school facilities subaccount pursuant to section 302A-1151.2; and
 - (4) Notwithstanding any law to the contrary, the department may enter into leaseback agreements that allow the department to lease or sublease the property to a third party. The department may lease back the property from the third-party lessee or sublessee for a contractual period of time, after which the department shall own any improvements.”

PART II

SECTION 3. The legislature finds that Act 206, Session Laws of Hawaii 2017 (Act 206), became law on July 12, 2017. The purpose of Act 206, in part, was to transfer public lands under existing department of education facilities from the city and county of Honolulu to the State, with the department of land and natural resources designated as the agency to accept the properties.

The legislature further finds that, rather than have the lands transferred from the city and county of Honolulu to the department of land and natural resources and then to the department of education, Act 206 should be amended to allow the city and county of Honolulu to transfer the lands directly to the department of education in a manner similar to that in Act 210, Session Laws of Hawaii 2018.

The purpose of this part is to amend Act 206, Session Laws of Hawaii 2017, to allow the city and county of Honolulu to transfer lands under existing department of education facilities directly to the department of education, rather than to the department of land and natural resources.

SECTION 4. Act 206, Session Laws of Hawaii 2017, section 2, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) Notwithstanding any other law to the contrary, the fee simple interest to the following parcels of land with the existing improvements thereon (hereinafter “the properties”) (but not including submerged land, accreted land, or any land makai of the shoreline), shall be conveyed by the city and county of Honolulu to the department of [~~land and natural resources~~] education as grantee, as is, where is:

- (1) TMK 1-4-5-34-14 (Castle High);
- (2) TMKs 1-5-6-6-9, 1-5-6-6-10, and 1-5-6-6-25 (Kahuku High and Elementary);
- (3) TMK 1-4-4-34-24 (Kalaheo High);

- (4) TMK 1-9-1-1-2 (portion) (Campbell High);
- (5) TMK 1-8-5-15-1 (Waianae High);
- (6) TMK 1-9-4-8-20 (Waipahu High);
- (7) TMK 1-9-8-31-17 (Aiea High);
- (8) TMK 1-7-4-18-1 (Leilehua High);
- (9) TMK 1-9-9-2-23 (Radford High);
- (10) TMK 1-6-7-2-10 (Waialua High and Intermediate);
- (11) TMKs 1-6-003-048, 1-6-021-005 (Farrington High);
- (12) TMK 2-7-024-001 (Kaimuki High);
- (13) TMK 3-9-005-027 (Kaiser High); and
- (14) TMK 3-5-020-004 (Kalani High).

(b) The city and county of Honolulu shall prepare, execute, and record, in the land court or bureau of conveyances, as appropriate, a quitclaim deed to convey each above-listed parcel with all existing improvements, subject to the property boundaries determined pursuant to subsection (d), to the department of ~~[land and natural resources,]~~ education, as grantee. As these are conveyances in which the city and county of Honolulu and the State and its agencies are the only parties, the tax imposed by section 247-1, Hawaii Revised Statutes, shall not apply to them. Effective on the date of transfer pursuant to subsection (e), every reference to the present titleholder or the head of the department or agency in each instrument, if the titleholder is a department or an agency, shall be construed as a reference to the department of ~~[land and natural resources,]~~ education.

(c) The department of ~~[land and natural resources]~~ education shall accept the properties in their existing condition. All claims and liabilities against the city and county of Honolulu, if any, which the department of ~~[land and natural resources]~~ education has, may have had, or may have in the future, regarding any injury, loss, cost, damage, or liability, including reasonable attorney's fees, concerning the physical, environmental, soil, economic, and legal conditions of the conveyed properties, are released, waived, and extinguished."

PART III

SECTION 5. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

"§171-2 Definition of public lands. "Public lands" means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including lands accreted after May 20, 2003, and not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the state constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;

- (5) Lands to which the University of Hawaii holds title;
 - (6) Lands to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
 - (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
 - (8) Lands set aside by the governor to the Hawaii public housing authority or lands to which the Hawaii public housing authority in its corporate capacity holds title;
 - [(8)] (9) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
 - [(9)] (10) Lands that are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity;
 - [(10)] (11) Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title;
 - [(11)] (12) Lands to which the Hawaii technology development corporation in its corporate capacity holds title; and
 - [(12)] (13) Lands to which the department of education holds title;
- provided that, except as otherwise limited under federal law and except for state land used as an airport as defined in section 262-1, public lands shall include the air rights over any portion of state land upon which a county mass transit project is developed after July 11, 2005."

SECTION 6. Section 171-64.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This section applies to all lands or interest therein owned or under the control of state departments and agencies classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or any other manner, including accreted lands not otherwise awarded, submerged lands, and lands beneath tidal waters that are suitable for reclamation, together with reclaimed lands that have been given the status of public lands under this chapter, including:

- (1) Land set aside pursuant to law for the use of the United States;
- (2) Land to which the United States relinquished the absolute fee and ownership under section 91 of the Organic Act prior to the admission of Hawaii as a state of the United States;
- (3) Land to which the University of Hawaii holds title;
- (4) Land to which the Hawaii housing finance and development corporation in its corporate capacity holds title;
- (5) Land to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (6) Land that is set aside by the governor to the Aloha Tower development corporation; or land to which the Aloha Tower development corporation holds title in its corporate capacity;

- (7) Land that is set aside by the governor to the agribusiness development corporation; or land to which the agribusiness development corporation in its corporate capacity holds title;
- (8) Land to which the Hawaii technology development corporation in its corporate capacity holds title; ~~and~~
- (9) Land to which the department of education holds title~~[-]; and~~
- (10) Land to which the Hawaii public housing authority in its corporate capacity holds title.”

PART IV

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2019.

(Approved July 9, 2019.)