

JAN 23 2014

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. The legislature finds that mediation is an
2 effective method of resolving disputes that should be made
3 available to resolve disputes regarding the fair market value or
4 fair market rental of public lands in transactions involving the
5 board of land and natural resources and private purchasers,
6 owners, or leaseholders. The legislature further finds that the
7 present statutory framework for the arbitration of such disputes
8 is cumbersome and does not provide the parties an opportunity to
9 work collaboratively toward mutual solutions to disputes.

10 The purpose of this Act is to authorize the board of land
11 and natural resources to provide for non-binding mediation of
12 disputes regarding the fair market value of public lands in
13 transactions involving the purchase, lease, or repurchase of the
14 public lands and the fair market rental of public lands under
15 lease when rentals are reopened. This Act also preserves the
16 option of binding arbitration to resolve disputes when the
17 mediation process fails to do so.



1 SECTION 2. Section 171-17, Hawaii Revised Statutes, is
2 amended by amending subsections (b) through (e) to read as
3 follows:

4 "(b) The sale price or lease rental of lands to be
5 disposed of by drawing or by negotiation shall be no less than
6 the value determined by:

7 (1) An employee of the board qualified to appraise lands;
8 or

9 (2) A disinterested appraiser or appraisers whose services
10 shall be contracted for by the board, and such
11 appraisal, and any further appraisal with the approval
12 of the board, shall be at the cost of the purchaser;

13 provided that the sale price or lease rental shall be determined
14 by disinterested appraisal whenever prudent management so
15 dictates; provided further that should the purchaser fail to
16 agree upon the sale price or lease rental, the purchaser may
17 appoint an appraiser who shall conduct an appraisal on behalf of
18 the purchaser. If, after the purchaser's appraisal, the board
19 and the purchaser do not agree on the sale price or lease
20 rental, the parties shall make a good faith effort to resolve
21 the dispute through non-binding mediation by a single mediator,
22 appointed by mutual agreement of the parties. The cost of



1 mediation shall be borne equally by the parties. In the event
2 that mediation does not resolve the dispute, the purchaser's
3 appraiser together with the board's appraiser shall appoint a
4 third appraiser, and the sale price or lease rental shall be
5 determined by arbitration as provided for in chapter 658A which
6 shall be final and binding. The purchaser shall pay for all
7 appraisal costs, except that the cost of the third appraiser
8 shall be borne equally by the purchaser and the board.

9 (c) In the repurchase of any land by the board, the board
10 shall have the option to repurchase the land for the original
11 sale price or the fair market value at the time of repurchase,
12 whichever is the lower. Any improvements affixed to the realty
13 shall be purchased at their fair market value. At the time of
14 the repurchase, the fair market value of the land, and the
15 improvements, if any, shall be determined by a qualified
16 appraiser whose services shall be contracted for by the board;
17 provided should the owner fail to agree upon the value, the
18 owner may appoint the owner's own appraiser who shall conduct an
19 appraisal on behalf of the owner. If, after the owner's
20 appraisal, the board and the owner do not agree on the sale
21 price, the parties shall make a good faith effort to resolve the
22 dispute through non-binding mediation by a single mediator,



1 appointed by mutual agreement of the parties. The cost of
2 mediation shall be borne equally by the parties. In the event
3 that mediation does not resolve the dispute, the owner's
4 appraiser together with the board's appraiser shall appoint a
5 third appraiser, and the value shall be determined by
6 arbitration as provided in chapter 658A. The owner shall pay
7 for all appraisal costs, except that the cost of the third
8 appraiser shall be borne equally by the purchaser and the board.

9 (d) In the event of reopening of the rental to be paid on
10 a lease, the rental for any ensuing period shall be the fair
11 market rental at the time of reopening. At least six months
12 prior to the time of reopening, the fair market rental shall be
13 determined by:

14 (1) An employee of the department qualified to appraise
15 lands; or

16 (2) A disinterested appraiser whose services shall be
17 contracted for by the board;

18 and the lessee shall be promptly notified of the
19 determination[+] and provided with the complete appraisal
20 prepared by the board or the board's appraiser; provided that
21 should the lessee fail to agree upon the fair market rental, the
22 lessee may appoint the lessee's own appraiser [~~who together with~~



1 ~~the board's appraiser shall appoint a third appraiser]~~ and the
2 lessee shall provide the board with the complete appraisal
3 prepared by the lessee's appraiser. Each party shall pay for
4 its own appraiser. In the event that the board's and the
5 lessee's appraisers do not agree on the lease rental, the lessee
6 and the board shall in good faith attempt to resolve the dispute
7 by non-binding mediation by a single mediator mutually agreed
8 upon by the parties. In the event that the dispute is not
9 resolved by the mediation, the fair market rental shall be
10 determined by arbitration as provided in chapter 658A[.~~The~~
11 ~~lessee shall pay for the lessee's own appraiser, the board shall~~
12 ~~pay for its appraiser, and the cost of the third appraiser]~~
13 which shall be final and binding. Either the board or the
14 lessee may initiate arbitration by a written demand to the other
15 party. The arbitration shall be conducted by a single
16 arbitrator, who shall be an attorney licensed in the State of
17 Hawaii, a person with experience in contracts and real estate
18 valuation, or another qualified person, who shall be mutually
19 agreed upon by the parties. If an arbitrator is not selected
20 within fifteen days of the demand for arbitration, appointment
21 of an arbitrator may be requested by either party by motion made
22 to the circuit court in the circuit in which the land is



1 located. The cost of mediation or arbitration shall be borne
2 equally by the lessee and the board. Any language in present
3 leases to the contrary notwithstanding, the provisions of this
4 subsection, when possible and notwithstanding the six-month
5 notice required, shall apply to leases with original lease
6 rental reopening dates effective before and after July 1, 1996.

7 (e) ~~[Whenever more than one appraiser is appointed each~~
8 ~~shall prepare and submit an independent appraisal. All]~~
9 Complete appraisal reports, including all comparables relied
10 upon in the appraisal reports, shall be available for study by
11 the public. All complete appraisal reports shall be provided to
12 the opposing party prior to the commencement of mediation or
13 arbitration, if applicable, of the valuation dispute."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval.

17
INTRODUCED BY:



S.B. NO. 2966

Report Title:

Public Lands; Reopening Lease; Mediation; Arbitration

Description:

Requires mediation in disputes regarding the fair market value or fair market rental of public lands. Provides for binding arbitration in the event of unsuccessful mediation.

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