

JAN 28 2015

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF TRANSPORTATION.

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

1 SECTION 1. The legislature finds that lessees of state
2 airport lands benefit from the use of that land and contribute
3 monetarily to the State through the payment of rent. It is a
4 principal of sound fiscal practice that that rental rates are
5 reasonable for the sake of the lessee and lessor.

6 The legislature further finds that rental rate increases at
7 state airports may be necessary from time to time. However, for
8 the sake of fairness and notice, increases in rental rates
9 should not drastically increase, unless necessary for sound
10 fiscal practice. Rental increases should instead steadily
11 increase over time to allow lessees time to budget and adapt.

12 The legislature further finds that after years of
13 significantly low rent rates, a recent appraisal may cause
14 lessees of hangar space at airports to face sudden rental
15 increases of up to four hundred thirty-nine per cent. Further,
16 there is reasonable disagreement on whether rental rates should



1 always reflect fair market value, since the rates needed to help
2 sustain the airport system may be lower than fair market value.

3 The purpose of this Act is to advance fiscally sound, but
4 fair reform regarding airport land rental rates by:

5 (1) Increasing the frequency of state airport property
6 appraisals; and

7 (2) Allowing rentals and appraisals regarding the lease of
8 state airport property to be based on any reasonable
9 methodology.

10 SECTION 2. Section 171-17, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§171-17 Appraisals.** (a) The appraisal of public lands
13 for sale or lease at public auction for the determination of the
14 upset price may be performed by an employee of the board of land
15 and natural resources qualified to appraise lands, or by one but
16 not more than three disinterested appraisers whose services
17 shall be contracted for by the board; provided that the upset
18 price or upset rental shall be determined by disinterested
19 appraisal whenever prudent management so dictates. No such
20 lands shall be sold or leased for a sum less than the value
21 fixed by appraisal; provided that for any sale or lease at



1 public auction, the board may establish the upset sale or rental
2 price at less than the appraisal value set by an employee of the
3 board and the land may be sold or leased at that price. The
4 board shall be reimbursed by the purchaser or lessee for the
5 cost of any appraisal required to be made by a disinterested
6 appraiser or appraisers contracted for by the board.

7 (b) The sale price or lease rental of lands to be disposed
8 of by drawing or by negotiation shall be no less than the value
9 determined by:

10 (1) An employee of the board qualified to appraise lands;
11 or

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

16 provided that the sale price or lease rental shall be determined
17 by disinterested appraisal whenever prudent management so
18 dictates; provided further that if the purchaser does not agree
19 upon the sale price or lease rental, the purchaser may appoint
20 an appraiser who shall conduct an appraisal on behalf of the
21 purchaser. If, after the purchaser's appraisal, the board and



1 the purchaser do not agree on the sale price or lease rental,
2 the parties shall make a good faith effort to resolve the
3 dispute through nonbinding mediation by a single mediator,
4 appointed by mutual agreement of the parties. The cost of
5 mediation shall be borne equally by the parties. If mediation
6 does not resolve the dispute, the purchaser's appraiser together
7 with the board's appraiser shall appoint a third appraiser, and
8 the sale price or lease rental shall be determined by
9 arbitration as provided for in chapter 658A, which shall be
10 final and binding. The purchaser shall pay for all appraisal
11 costs, except that the cost of the third appraiser shall be
12 borne equally by the purchaser and the board.

13 (c) In the repurchase of any land by the board, the board
14 shall have the option to repurchase the land for the original
15 sale price or the fair market value at the time of repurchase,
16 whichever is the lower. Any improvements affixed to the realty
17 shall be purchased at their fair market value. At the time of
18 the repurchase, the fair market value of the land, and the
19 improvements, if any, shall be determined by a qualified
20 appraiser whose services shall be contracted for by the board;
21 provided that if the owner does not agree upon the value, the



1 owner may appoint the owner's own appraiser who shall conduct an
2 appraisal on behalf of the owner. If, after the owner's
3 appraisal, the board and the owner do not agree on the sale
4 price, the parties shall make a good faith effort to resolve the
5 dispute through nonbinding mediation by a single mediator,
6 appointed by mutual agreement of the parties. The cost of
7 mediation shall be borne equally by the parties. If mediation
8 does not resolve the dispute, the owner's appraiser together
9 with the board's appraiser shall appoint a third appraiser, and
10 the value shall be determined by arbitration as provided in
11 chapter 658A. The owner shall pay for all appraisal costs,
12 except that the cost of the third appraiser shall be borne
13 equally by the owner and the board.

14 (d) If a reopening of the rental to be paid on a lease
15 occurs, the rental for any ensuing period shall be the fair
16 market rental at the time of reopening. At least six months
17 prior to the time of reopening, the fair market rental shall be
18 determined by:

- 19 (1) An employee of the department qualified to appraise
20 lands; or



1 (2) A disinterested appraiser whose services shall be
2 contracted for by the board;
3 and the lessee shall be promptly notified of the determination
4 and provided with the complete appraisal prepared by the board
5 or the board's appraiser; provided that if the lessee does not
6 agree upon the fair market rental, the lessee may appoint the
7 lessee's own appraiser and the lessee shall provide the board
8 with the complete appraisal prepared by the lessee's appraiser.
9 Each party shall pay for its own appraiser. If the board's and
10 the lessee's appraisers do not agree upon the lease rental, the
11 lessee and the board shall in good faith attempt to resolve the
12 dispute by nonbinding mediation by a single mediator mutually
13 agreed upon by the parties. If the dispute is not resolved by
14 the mediation, the fair market rental shall be determined by
15 arbitration as provided in chapter 658A, which shall be final
16 and binding. Either the board or the lessee may initiate
17 arbitration by a written demand to the other party. The
18 arbitration shall be conducted by a single arbitrator, who shall
19 be an attorney licensed in the State, a person with experience
20 in contracts and real estate valuation, or another qualified
21 person, who shall be mutually agreed upon by the parties. If an



1 arbitrator is not selected within fifteen days of the demand for
2 arbitration, appointment of an arbitrator may be requested by
3 either party by motion made to the circuit court in the circuit
4 in which the land is located. The cost of mediation or
5 arbitration shall be borne equally by the lessee and the board.
6 Any language in present leases to the contrary notwithstanding,
7 the provisions of this subsection, when possible and
8 notwithstanding the six-month notice required, shall apply to
9 leases with original lease rental reopening dates effective
10 before and after July 1, 1996.

11 (e) Complete appraisal reports, including all comparables
12 relied upon in the appraisal reports, shall be available for
13 study by the public. All complete appraisal reports shall be
14 provided to the opposing party prior to the commencement of
15 mediation or arbitration, if applicable, of the valuation
16 dispute.

17 (f) Notwithstanding the foregoing, all charges, rentals,
18 and fees for the lease of any state airport land under the
19 jurisdiction of the department shall be based on an appraisal
20 that is supported by a fair market valuation, a historic
21 valuation, or any other reasonable methodology."



1 SECTION 3. Section 261-7, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Except as otherwise provided in this section, in each
4 case mentioned in subsection (a)(1), (2), (3), and (4), the
5 department may establish the terms and conditions of the
6 contract, lease, license, or other arrangement, and may fix the
7 charges, rentals, or fees for the privileges, services, or
8 things granted, conferred, or made available, for the purpose of
9 meeting the expenditures of the statewide system of airports set
10 forth in section 261-5(a), which includes expenditures for
11 capital improvement projects approved by the legislature.
12 [~~Such~~] All charges, rentals, and fees shall be reasonable and
13 uniform for the same class of privilege, service, or thing.

14 All charges, rentals, and fees for the lease of land shall
15 be consistent with the most recent disinterested appraisal
16 obtained by the department pursuant to this subsection. Before
17 July 1, 2018, and no less than every three years thereafter, the
18 department shall obtain a disinterested appraisal supported by a
19 fair market valuation, a historic valuation, or any other
20 reasonable methodology; provided that if the board of land and
21 natural resources approves of an appraisal of the land, pursuant



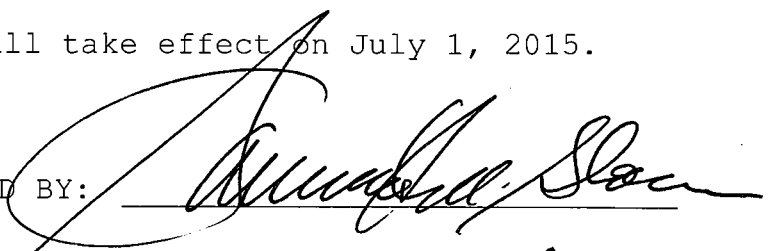
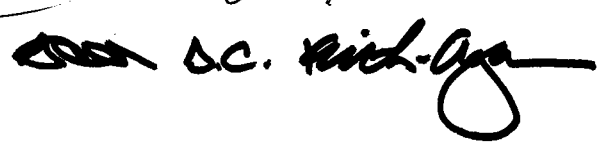
1 to section 171-17 during any relevant time period, the
2 department may use that appraisal for the purposes of this
3 subsection."

4 SECTION 4. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 5. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect on July 1, 2015.

13 INTRODUCED BY:



S.B. NO. 1181

Report Title:

Appraisals; Airports; Leases; Department of Transportation

Description:

Establishes a mandatory, periodic appraisal of airport lands that are leased to the public.

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

