

S.B. NO. 2937

JAN 27 2016

A BILL FOR AN ACT

RELATING TO LAND DISPOSITIONS.

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

SECTION 1. Section 171-6, Hawaii Revised Statutes, is amended to read as follows:

"§171-6 Powers. Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

- (1) Adopt a seal;
- (2) Administer oaths;
- (3) Prescribe forms of instruments and documents;
- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the

S.B. NO. 2931

1 state general fund, unless otherwise specified in this
2 chapter;

3 (6) Establish additional restrictions, requirements, or
4 conditions, not inconsistent with those prescribed in
5 this chapter, relating to the use of particular land
6 being disposed of, the terms of sale, lease, license,
7 or permit, and the qualifications of any person to
8 draw, bid, or negotiate for public land;

9 (7) Reduce or waive the lease rental at the beginning of
10 the lease on any lease of public land to be used for
11 any agricultural or pastoral use, or for resort,
12 commercial, industrial, or other business use where
13 the land being leased requires substantial
14 improvements to be placed thereon; provided that such
15 reduction or waiver shall not exceed two years for
16 land to be used for any agricultural or pastoral use,
17 or exceed one year for land to be used for resort,
18 commercial, industrial, or other business use;

19 (8) Delegate to the chairperson or employees of the
20 department of land and natural resources, subject to
21 the board's control and responsibility, such powers
22 and duties as may be lawful or proper for the

S.B. NO. 2937

1 performance of the functions vested in the board;
2 provided that the board may delegate to the director
3 of transportation the authority to approve revocable
4 permits for public lands set aside to the department
5 of transportation pursuant to section 171-11;

6 (9) Use arbitration under chapter 658A to settle any
7 controversy arising out of any existing or future
8 lease;

9 (10) Set, charge, and collect reasonable fees in an amount
10 sufficient to defray the cost of performing or
11 otherwise providing for the inspection of activities
12 permitted upon the issuance of a land license
13 involving a commercial purpose;

14 (11) Appoint masters or hearing officers to conduct public
15 hearings as provided by law and under such conditions
16 as the board by rules shall establish;

17 (12) Bring such actions as may be necessary to remove or
18 remedy encroachments upon public lands. Any person
19 causing an encroachment upon public land shall:

20 (A) Be fined not more than \$1,000 a day for the first
21 offense;

S.B. NO. 2937

(B) Be fined not less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;

(C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;

(D) Assume such costs as may result from adverse effects from such restoration; and

(E) Be liable for administrative costs incurred by the department and for payment of damages;

(13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;

(14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the

S.B. NO. 2937

1 occurrence of the violation. Such amounts shall be
2 considered delinquent payments and shall be subject to
3 interest and service charges as provided in paragraph
4 (13);

5 (15) Set, charge, and collect reasonable fines for
6 violation of this chapter or any rule adopted
7 thereunder. Any person engaging in any prohibited use
8 of public lands or conducting any prohibited activity
9 on public lands, or violating any of the other
10 provisions of this chapter or any rule adopted
11 thereunder, for which violation a penalty is not
12 otherwise provided, shall be:

13 (A) Fined not more than \$5,000 per violation for a
14 first violation or a violation beyond five years
15 of the last violation; provided that, after
16 written or verbal notification from the
17 department, an additional \$1,000 per day per
18 violation may be assessed for each day in which
19 the violation persists;

20 (B) Fined not more than \$10,000 per violation for a
21 second violation within five years of the last
22 violation; provided that, after written or verbal

S.B. NO. 2937

1 notification from the department, an additional
2 \$2,000 per day per violation may be assessed for
3 each day in which the violation persists;

4 (C) Fined not more than \$20,000 per violation for a
5 third or subsequent violation within five years of
6 the last violation; provided that, after written
7 or verbal notification from the department, an
8 additional \$4,000 per day per violation may be
9 assessed for each day in which the violation
10 persists; and

11 (D) Liable for administrative costs and expenses
12 incurred by the department and for payment for
13 damages, including but not limited to natural
14 resource damages.

15 In addition to the fines, administrative costs, and
16 damages provided for hereinabove, for damage to or
17 theft of natural resources, the board may also set,
18 charge, and collect a fine that, in its discretion, is
19 appropriate considering the value of the natural
20 resource that is damaged or the subject of the
21 theft. In arriving at an appropriate fine, the board
22 may consider the market value of the natural resource

S.B. NO. 2937

1 damaged or taken and any other factor it deems
2 appropriate, such as the loss of the natural resource
3 to its natural habitat and environment and the cost of
4 restoration or replacement. The remedies provided for
5 in this paragraph are cumulative and in addition to
6 any other remedies allowed by law.

7 No person shall be sanctioned pursuant to this section
8 for the exercise of native Hawaiian gathering rights
9 and traditional cultural practices as authorized by
10 law or as permitted by the department pursuant to
11 article XII, section 7, of the Hawaii state
12 constitution;

13 (16) Issue revenue bonds, subject to the approval of the
14 legislature. All revenue bonds shall be issued
15 pursuant to part III of chapter 39, except as provided
16 in this chapter. All revenue bonds shall be issued in
17 the name of the department and not in the name of the
18 State. The final maturity date of the revenue bonds
19 may be any date not exceeding thirty years from the
20 date of issuance;

21 (17) Pledge or assign all or any part of the receipts and
22 revenues of the department. The revenue bonds shall

S.B. NO. 2937

1 be payable from and secured solely by the revenue
2 derived by the department from the industrial park or
3 parks for which the bonds are issued;

4 (18) Reimburse the state general fund for debt service on
5 general obligation bonds or reimbursable general
6 obligation bonds issued by the State for purposes of
7 this chapter;

8 (19) Notwithstanding part II of chapter 205A to the
9 contrary, plan, design, construct, operate, and
10 maintain any lands or facilities under the
11 jurisdiction of the division of boating and ocean
12 recreation of the department without the need to
13 obtain a special management area minor permit or
14 special management area use permit; and

15 (20) Do any and all things necessary to carry out its
16 purposes and exercise the powers granted in this
17 chapter."

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

20 "§171-11 Public purposes, lands set aside by the governor;
21 management. The governor may, with the prior approval of the
22 board of land and natural resources, set aside public lands to

S.B. NO. 2937

1 any department or agency of the State, the city and county,
2 county, or other political subdivisions of the State for public
3 use or purpose. All withdrawals of the lands or portions
4 thereof so set aside shall be made by the governor.

5 Any public lands set aside by the governor prior to the
6 enactment of this chapter, or any public lands set aside by the
7 governor of the Territory of Hawaii, shall be subject to the
8 provisions of this section.

9 Lands while so set aside for such use or purpose or when
10 acquired for roads and streets shall be managed by the
11 department, agency, city and county, county, or other political
12 subdivisions of the State having jurisdiction thereof, unless
13 otherwise provided by law. Such department, agency of the
14 State, the city and county, county, or other political
15 subdivisions of the State in managing such lands shall be
16 authorized to exercise all of the powers vested in the board in
17 regard to the issuance of leases, easements, licenses, revocable
18 permits, concessions, or rights of entry covering such lands for
19 such use as may be consistent with the purposes for which the
20 lands were set aside on the same terms, conditions, and
21 restrictions applicable to the disposition of public lands, as
22 provided by this chapter all such dispositions being subject to

S.B. NO. 2937

1 the prior approval of the board; provided that any nonrenewable
2 dispositions granting rights for a period not in excess of
3 fourteen days, or revocable permits for public lands set aside
4 to the department of transportation and issued by the department
5 of transportation, shall not require (1) the approval of the
6 board or (2) public auction or public advertisement for sealed
7 tenders; and provided further that disposition of lands set
8 aside for use as agricultural parks pursuant to chapter 166
9 shall not be subject to the prior approval of the board. If at
10 the time of the disposition of any such leases the board shall
11 have approved the same, any order withdrawing or setting aside
12 any or all of such lands for any other public purpose shall be
13 made subject to such leases. Subject to section 5(f) of the Act
14 of March 18, 1959 (73 Stat. 6), all proceeds from such lands
15 shall be deposited into the appropriate funds provided by law.

16 This section shall also apply where the purposes are the
17 uses and purposes of the United States; provided that all
18 revenues derived from the lands and improvements thereon shall
19 be paid to the department of land and natural resources by the
20 United States.

21 Whenever lands set aside for a public purpose to the
22 various departments and agencies of the State, or to any city

S.B. NO. 2937

1 and county, county, or other political subdivisions of the
2 State, or to the United States, are not being utilized or
3 required for the public purpose stated, the order setting aside
4 the lands shall be withdrawn and the lands shall be returned to
5 the department. The governor may withdraw public lands and,
6 with the prior approval of the board of land and natural
7 resources, set aside the withdrawn lands to another department
8 or agency of the State, the city and county, county, or
9 political subdivision of the State, or to the United States for
10 public use or purpose, provided that no structure on such lands
11 shall be built, demolished, or altered until after the
12 legislative action or inaction as hereinbelow provided.

13 The power granted to the governor in this section to set
14 aside or withdraw or withdraw and set aside public lands shall
15 be exercised subject to disapproval by the legislature by two-
16 thirds vote of either the senate or the house of representatives
17 or by the majority vote of both, in any regular or special
18 session next following the date of the setting aside or
19 withdrawal, or withdrawal and setting aside.

20 Whenever portions of lands set aside for a public purpose
21 to the various departments and agencies of the State, or to any
22 city and county, county, or other political subdivision of the

S.B. NO. 2937

1 State are not presently utilized or required for the public
2 purpose stated, the board shall have the power, without
3 withdrawing the order setting aside the lands, to dispose of any
4 and all real property interest less than the fee in the portions
5 of such lands where the disposition is for a use which is
6 consistent or inconsistent with the purpose for which the land
7 was set aside. All funds derived from disposition by the board
8 shall be deposited in the general fund of the State or be paid
9 to the appropriate account; provided that all such dispositions
10 shall be with the prior written approval of the department,
11 agency, city and county, county, or other political subdivisions
12 of the State and the governor, and shall be undertaken in
13 compliance with all other applicable sections of this chapter."

14 SECTION 3. Section 171-55, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§171-55 Permits. Notwithstanding any other law to the
17 contrary, the board of land and natural resources, or the
18 department of transportation with respect to revocable permits
19 issued for public land under its jurisdiction pursuant to
20 section 171-11, may issue permits for the temporary occupancy of
21 state lands or an interest therein on a month-to-month basis by
22 direct negotiation without public auction, under conditions and

S.B. NO. 2937

1 rent which will serve the best interests of the State, subject,
2 however, to those restrictions as may from time to time be
3 expressly imposed by the board-, except for revocable permits
4 that are issued by the department of transportation. A permit
5 on a month-to-month basis may continue for a period not to
6 exceed one year from the date of its issuance; provided that the
7 board or the department of transportation may allow the permit
8 to continue on a month-to-month basis for additional one year
9 periods."

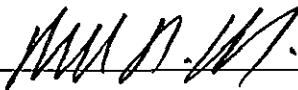
10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act, upon its approval, shall take effect
13 on July 1, 2016.

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INTRODUCED BY:



16

BY REQUEST

S.B. NO. 2937

Report Title:

Disposition of Land by the Department of Transportation

Description:

Authorizes the Department of Transportation to issue revocable permits without approval of the Board of Land and Natural Resources.

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

JUSTIFICATION SHEET

DEPARTMENT: Transportation

TITLE: A BILL FOR AN ACT RELATING TO LAND DISPOSITIONS.

PURPOSE: Authorizes the Department of Transportation to issue revocable permits without approval of the Board of Land and Natural Resources.

MEANS: Amend sections 171-6, 171-11, and 171-55, Hawaii Revised Statutes.

JUSTIFICATION: The Department of Transportation is best suited to manage lands it owns and controls, especially with regard to land dispositions for aeronautic, airport-related, maritime, and maritime-related uses because it is most directly connected to these industries and operations and can best adapt and adjust to accommodate industry needs. In 1993, The Board of Land and Natural Resources approved the delegation of authority to the Department of Transportation to issue revocable permits for uses that are consistent with the purpose and intent of the public lands set aside through Executive Orders. It has recently been determined that this delegation of authority was not proper. The proposed bill clarifies the statutes to allow dispositions of revocable permits without approval by the Board of Land and Natural. The time constraints associated with presenting short-term land dispositions to the Board of Land and Natural Resources result in unnecessary delays and loss of revenues.

Approximately 80 percent of all goods consumed in Hawaii are brought in through the State through either an airport or harbor facility. Almost all people traveling to, from, and between the Hawaiian Islands must also use either an airport or a

commercial harbor facility. Given the critical role that these facilities, and the lands under these facilities, have in the State's economy, it is prudent for the function of the disposition of the public lands that support these operations be controlled by the Department of Transportation.

Impact on the public: The bill facilitates more efficient use of lands owned and controlled by the Department of Transportation that support and sustain the state's economy.

Impact on the department and other agencies: This proposal will result in fewer items sent to the Board of Land and Natural Resources for approval.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	
OTHER AFFECTED AGENCIES:	Land and Natural Resources.
EFFECTIVE DATE:	July 1, 2016.