

JAN 23 2015

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 Act 168, Session
2 Laws of Hawaii 2014, amended section 171-17, Hawaii Revised
3 Statutes, to provide a process for resolving disputes regarding
4 the fair market value or fair rental value of public land in
5 sale, lease, or repurchase transactions involving the board of
6 land and natural resources through mediation while preserving
7 the existing remedy of binding arbitration. However, the
8 legislature further finds that section 171-17, Hawaii Revised
9 Statutes, now requires the board of land and natural resources
10 and an opposing party to engage in non-binding mediation prior
11 to binding arbitration. This requirement has the effect of
12 making the dispute resolution process more costly and time
13 consuming, and may produce settlements where the State would
14 receive less than fair market rents from the use of public trust
15 lands, resulting in decreased lease rentals.

16 The purpose of this Act is to:



(1) Require the board of land and natural resources and an opposing party to mutually agree to resolve disputes regarding the fair market value or fair market rental of public lands through binding mediation or binding arbitration;

(2) Specify that if either party in a dispute cannot agree on binding mediation or binding arbitration, the dispute shall be determined by binding arbitration; and

(3) Require the board and an opposing party, when reopening a rental, to resolve disputes through binding mediation or as provided in the lease.

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

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

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



1 (2) A disinterested appraiser or appraisers whose services
2 shall be contracted for by the board, and the
3 appraisal, and any further appraisal with the approval
4 of the board, shall be at the cost of the purchaser;
5 provided that the sale price or lease rental shall be determined
6 by disinterested appraisal whenever prudent management so
7 dictates; provided further that if the purchaser does not agree
8 upon the sale price or lease rental, the purchaser may appoint
9 an appraiser who shall conduct an appraisal on behalf of the
10 purchaser. If, after the purchaser's appraisal, the board and
11 the purchaser do not agree on the sale price or lease rental,
12 the parties shall ~~[make a good faith effort to resolve the~~
13 ~~dispute through nonbinding mediation by a single mediator,~~
14 ~~appointed by mutual agreement of the parties. The cost of~~
15 ~~mediation shall be borne equally by the parties. If mediation~~
16 ~~does not resolve the dispute,]~~ mutually agree to: resolve the
17 dispute through binding mediation by a single mediator,
18 appointed by mutual agreement of the parties; or have the
19 purchaser's appraiser together with the board's appraiser
20 [shall] appoint a third appraiser, and the sale price or lease
21 rental shall be determined by arbitration as provided for in



1 chapter 658A, which shall be final and binding[-]; provided that
2 if either party cannot agree on binding mediation or
3 arbitration, the sale price or lease rental shall be determined
4 by arbitration as provided for in chapter 658A, which shall be
5 final and binding. The purchaser shall pay for all appraisal
6 costs, except that the cost of the single mediator or third
7 appraiser shall be borne equally by the purchaser and the board.

8 (c) In the repurchase of any land by the board, the board
9 shall have the option to repurchase the land for the original
10 sale price or the fair market value at the time of repurchase,
11 whichever is the lower. Any improvements affixed to the realty
12 shall be purchased at their fair market value. At the time of
13 the repurchase, the fair market value of the land, and the
14 improvements, if any, shall be determined by a qualified
15 appraiser whose services shall be contracted for by the board;
16 provided that if the owner does not agree upon the value, the
17 owner may appoint the owner's own appraiser who shall conduct an
18 appraisal on behalf of the owner. If, after the owner's
19 appraisal, the board and the owner do not agree on the sale
20 price, the parties shall ~~[make a good faith effort to resolve~~
21 ~~the dispute through nonbinding 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. If mediation~~
3 ~~does not resolve the dispute,]~~ mutually agree to: resolve the
4 dispute through binding mediation by a single mediator,
5 appointed by mutual agreement of the parties; or have the
6 owner's appraiser together with the board's appraiser [shall]
7 appoint a third appraiser, and the value shall be determined by
8 arbitration as provided in chapter 658A[-], which shall be final
9 and binding; provided that if either party cannot agree on
10 binding mediation or arbitration, the value shall be determined
11 by arbitration as provided for in chapter 658A, which shall be
12 final and binding. The owner shall pay for all appraisal costs,
13 except that the cost of the single mediator or third appraiser
14 shall be borne equally by the owner and the board.

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

20 (1) An employee of the department qualified to appraise
21 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
9 appraiser. Each party shall pay for its own appraiser. If the
10 board's and the lessee's appraisers do not agree upon the lease
11 rental, the lessee and the board shall ~~[in good faith attempt to~~
12 ~~resolve the dispute by nonbinding mediation by a single mediator~~
13 ~~mutually agreed upon by the parties. If the dispute is not~~
14 ~~resolved by the mediation, the fair market rental shall be~~
15 ~~determined by arbitration as provided in chapter 658A, which~~
16 ~~shall be final and binding. Either the board or the lessee may~~
17 ~~initiate arbitration by a written demand to the other party.~~
18 ~~The arbitration shall be conducted by a single arbitrator, who~~
19 ~~shall be an attorney licensed in the State, a person with~~
20 ~~experience in contracts and real estate valuation, or another~~
21 ~~qualified person, who shall be mutually agreed upon by the~~



1 ~~parties. If an arbitrator is not selected within fifteen days~~
2 ~~of the demand for arbitration, appointment of an arbitrator may~~
3 ~~be requested by either party by motion made to the circuit court~~
4 ~~in the circuit in which the land is located. The cost of~~
5 ~~mediation or arbitration shall be borne equally by the lessee~~
6 ~~and the board. Any language in present leases to the contrary~~
7 ~~notwithstanding, the provisions of this subsection, when~~
8 ~~possible and notwithstanding the six month notice required,~~
9 ~~shall apply to leases with original lease rental reopening dates~~
10 ~~effective before and after July 1, 1996.] mutually agree: to~~
11 ~~resolve the dispute through binding mediation by a single~~
12 ~~mediator, appointed by mutual agreement of the parties; or that~~
13 ~~the lease rental shall be determined as provided in the lease;~~
14 ~~provided that if the lease requires determination of the lease~~
15 ~~rental by arbitration, the fair market rental shall be~~
16 ~~determined by arbitration as provided in chapter 658A, which~~
17 ~~shall be final and binding. The cost of arbitration shall be~~
18 ~~borne equally by the lessee and the board.~~

19 (e) ~~[Complete appraisal]~~ Appraisal reports, including all
20 comparables relied upon in the appraisal reports, shall be
21 available for study by the public. All ~~[complete]~~ appraisal



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1 reports shall be [~~provided to the opposing party~~] exchanged
2 between parties prior to the commencement of mediation or
3 arbitration, if applicable, of the valuation dispute."

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect upon its approval.

10

INTRODUCED BY:

Rosalyn H. Baker
By Request



S.B. NO. 761

Report Title:

Public Lands; Board of Land and Natural Resources; Disputes;
Mediation; Arbitration; Reopening Lease

Description:

Requires the board of land and natural resources and an opposing party to mutually agree to resolve disputes regarding the fair market value or fair market rental of public lands through binding mediation or binding arbitration. Specifies that if either party in a dispute cannot agree on binding mediation or binding arbitration, the dispute shall be determined by binding arbitration. Requires the board and an opposing party, when reopening a rental, to resolve disputes through binding mediation or as provided in the lease.

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

