

JAN 25 2017

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 has authorized the board of
2 land and natural resources to dispose of public lands, as
3 defined in section 171-13, Hawaii Revised Statutes, subject to
4 restrictions and procedures contained in chapter 171, Hawaii
5 Revised Statutes. These restrictions and procedures ensure that
6 any land lease, lease extension, consent to sublease, or other
7 disposition of public land occurs only after the public is given
8 notice and the opportunity to testify at an open meeting of the
9 board of land and natural resources.

10 Under the existing law, these procedures do not include
11 contested case hearings under chapter 91, Hawaii Revised
12 Statutes. Sharma v. State, 66 Haw. 632, 673 P.2d 1030 (1983).
13 However, recent proceedings before the board of land and natural
14 resources have challenged this legal principle. Accordingly,
15 legislation is warranted to clarify the legislature's intent
16 that land leases, lease extensions, consents to subleases, and



1 any other dispositions of public land are not subject to
2 contested case hearings.

3 A contested case hearing is a type of trial proceeding
4 where the rights of specific parties are adjudicated. It can
5 take a year or more to conduct. In contrast, a decision to
6 lease public lands does not adjudicate the rights of specific
7 parties. However, if a person has a claim to specific rights in
8 a parcel of state land under a proposed lease, the existing law
9 protects those rights in a number of ways without a contested
10 case hearing:

11 (1) The person has the right to testify in person or in
12 writing before the board of land and natural resources
13 at a public meeting prior to the approval of any such
14 lease or other disposition, and if the board of land
15 and natural resources finds these claims to be valid,
16 it has the authority to incorporate provisions to
17 accommodate the person's claims.

18 (2) If a person has a right to exercise native Hawaiian
19 rights on the property, those rights survive the
20 transfer from the State to a lessee. Pele Defense



1 Fund v. Paty, 73 Haw. 578, 614, 837 P.2d 1247, 1268,
2 n.26 (1992).

3 (3) Any change in the use of state lands triggers chapter
4 343, Hawaii Revised Statutes, and unless the change is
5 insignificant, will trigger the requirement for an
6 environmental assessment or environmental impact
7 statement. Changes in the use of sensitive lands,
8 such as conservation lands or shoreline areas,
9 typically involve land use permits, such as
10 conservation district use permits or special
11 management area permits, which require a comprehensive
12 consideration of the environmental and cultural
13 effects of the proposed change. Notice of the change
14 and the opportunity for the public to testify are also
15 required.

16 The purpose of this Act is to expressly declare the intent
17 of the legislature that land leases and any other dispositions
18 of public land are not subject to contested case hearings.

19 SECTION 2. Section 171-13, Hawaii Revised Statutes, is
20 amended to read as follows:



S.B. NO. 1232

1 "§171-13 Disposition of public lands. Except as otherwise
2 provided by law and subject to other provisions of this chapter,
3 the board may:

4 (1) Dispose of public land in fee simple, by lease, lease
5 with option to purchase, license, or permit; and

6 (2) Grant easement by direct negotiation or otherwise for
7 particular purposes in perpetuity on such terms as may
8 be set by the board, subject to reverter to the State
9 upon termination or abandonment of the specific
10 purpose for which it was granted, provided the sale
11 price of such easement shall be determined pursuant to
12 section 171-17(b).

13 No person shall be eligible to purchase or lease public lands,
14 or to be granted a license, permit, or easement covering public
15 lands, who has had during the five years preceding the date of
16 disposition a previous sale, lease, license, permit, or easement
17 covering public lands canceled for failure to satisfy the terms
18 and conditions thereof. Notwithstanding any other provision of
19 law, no contested case hearing shall be required for a lease,
20 lease extension, consent to sublease, or any other disposition
21 of public lands."



S.B. NO. 1232

Report Title:

Disposition of Public Lands; Contested Case Hearings

Description:

Declares the intent of the legislature that a contested case hearing shall not be required for land leases, lease extensions, consents to subleases, or any other dispositions of public land.

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

