



GOV. MSG. NO. 1350

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 6, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 6, 2021, the following bill was signed into law:

SB1166 SD2 HD2

RELATING TO RENTALS FOR PUBLIC LAND
LEASES.

ACT 222 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

on JUL 06 2021

THE SENATE
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

ACT 222

S.B. NO.

1166
S.D. 2
H.D. 2

A BILL FOR AN ACT

RELATING TO RENTALS FOR PUBLIC LAND LEASES.

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

1 SECTION 1. The legislature finds that there are a number
2 of long-term leases of public lands originally entered into in
3 the 1940s that have expired in recent years. Some of these
4 leases were used for hotels, and significant hotel improvements
5 were constructed on the premises during the lease term. In some
6 cases, the leasehold improvements have exceeded their useful
7 life and require costly demolition in the range of \$8,000,000 to
8 \$10,000,000 for a single property. However, the lease forms
9 used for these leases did not require the lessee to remove the
10 improvements at the expiration of the lease term. As a result,
11 the demolition cost falls on the State unless the State can pass
12 the cost on to a future lessee who undertakes redevelopment of
13 the land.

14 The legislature further finds that there are unimproved
15 public lands in the State's inventory that the State desires to
16 develop for resort, commercial, industrial, or other business or
17 residential use. However, substantial investments in



1 infrastructure, including drainage, sewer, water, electricity,
2 and other utilities, will be required to facilitate development
3 of the lands with costs in the tens of millions of dollars. The
4 legislature recognizes the State's desire to pass the
5 infrastructure and other development costs of these lands on to
6 a future lessee of the lands.

7 Furthermore, the legislature recognizes that chapter 171,
8 Hawaii Revised Statutes, regarding conservation and resources,
9 limits the amount of rent reduction or waiver that a lessee of
10 public lands can receive for redeveloping or improving public
11 lands to one year's rent for land leased for resort, commercial,
12 industrial, or other business use. In many cases, a rent
13 reduction or waiver equal to one year of ground rent would be an
14 insufficient incentive to induce a developer to invest in the
15 demolition of aged improvements on and redevelopment of public
16 land, or in the provision of basic infrastructure necessary to
17 facilitate the further development of unimproved public land.

18 The purpose of this Act is to authorize the board of land
19 and natural resources to approve rental reductions or waivers
20 for leases that require substantial demolition costs or



1 infrastructure improvement costs for the lessee to utilize the
2 premises.

3 SECTION 2. Section 171-6, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§171-6 Powers.** Except as otherwise provided by law, the
6 board of land and natural resources shall have the powers and
7 functions granted to the heads of departments and the board of
8 land and natural resources under chapter 26.

9 In addition to the foregoing, the board may:

- 10 (1) Adopt a seal;
- 11 (2) Administer oaths;
- 12 (3) Prescribe forms of instruments and documents;
- 13 (4) Adopt rules which, upon compliance with chapter 91,
14 shall have the force and effect of law;
- 15 (5) Set, charge, demand, and collect reasonable fees for
16 the preparation of documents to be issued, for the
17 surveying of public lands, and for the issuing of
18 certified copies of its government records, which
19 fees, when collected, shall be deposited into the
20 state general fund, unless otherwise specified in this
21 chapter;



- 1 (6) Establish additional restrictions, requirements, or
- 2 conditions, [~~not inconsistent~~] consistent with those
- 3 prescribed in this chapter, relating to the use of
- 4 particular land being disposed of, the terms of sale,
- 5 lease, license, or permit, and the qualifications of
- 6 any person to draw, bid, or negotiate for public land;
- 7 (7) Reduce or waive the lease rental at the beginning of
- 8 the lease on any lease of public land to be used for
- 9 any agricultural or pastoral use, or for resort,
- 10 commercial, industrial, or other business use where
- 11 the land being leased requires substantial
- 12 improvements to be placed thereon; provided that
- 13 [~~such~~] the reduction or waiver shall not exceed two
- 14 years for land to be used for any agricultural or
- 15 pastoral use, or exceed one year for land to be used
- 16 for resort, commercial, industrial, or other business
- 17 use[+]. When a lease for resort, commercial,
- 18 industrial, or other business or residential purposes
- 19 requires a lessee to demolish existing improvements or
- 20 provide basic infrastructure, including drainage,
- 21 sewer, water, electricity, and other utilities, before

1 the lessee can make productive use of the land, the
2 board may approve a reduction or waiver of lease
3 rental for a period of up to twenty years; provided
4 that the aggregate amount of the reduced or waived
5 lease rental shall not exceed the amount of the
6 lessee's total expenditures for demolition or
7 provision of the infrastructure;

8 (8) Delegate to the chairperson or employees of the
9 department of land and natural resources, subject to
10 the board's control and responsibility, [~~such~~] powers
11 and duties as may be lawful or proper for the
12 performance of the functions vested in the board;

13 (9) Use arbitration under chapter 658A to settle any
14 controversy arising out of any existing or future
15 lease;

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



- 1 (11) Appoint [~~masters or~~] hearing officers to conduct
2 public hearings as provided by law and under [~~such~~]
3 conditions as the board by rules shall establish;
- 4 (12) Bring [~~such~~] actions as may be necessary to remove or
5 remedy encroachments upon public lands. Any person
6 causing an encroachment upon public land shall:
- 7 (A) Be fined [~~not~~] no more than \$1,000 a day for the
8 first offense;
- 9 (B) Be fined [~~not~~] no less than \$1,000 nor more than
10 \$4,000 per day upon the second offense and
11 thereafter;
- 12 (C) If required by the board, restore the land to its
13 original condition if altered and assume the
14 costs thereof;
- 15 (D) Assume [~~such~~] costs as may result from adverse
16 effects from [~~such~~] restoration; and
- 17 (E) Be liable for administrative costs incurred by
18 the department and for payment of damages;
- 19 (13) Set, charge, and collect interest and a service charge
20 on delinquent payments due on leases, sales, or other
21 accounts. The rate of interest shall not exceed



1 one per cent a month and the service charge shall not
2 exceed \$50 a month for each delinquent payment;
3 provided that the contract shall state the interest
4 rate and the service charge and be signed by the party
5 to be charged;

6 (14) Set, charge, and collect additional rentals for the
7 unauthorized use of public lands by a lessee,
8 licensee, grantee, or permittee who is in violation of
9 any term or condition of a lease, license, easement,
10 or revocable permit, retroactive to the date of the
11 occurrence of the violation. [~~Such~~] The amounts shall
12 be considered delinquent payments and shall be subject
13 to interest and service charges as provided in
14 paragraph (13);

15 (15) Set, charge, and collect reasonable fines for
16 violation of this chapter or any rule adopted
17 thereunder. Any person engaging in any prohibited use
18 of public lands or conducting any prohibited activity
19 on public lands, or violating any of the other
20 provisions of this chapter or any rule adopted



1 thereunder, for which violation a penalty is not
2 otherwise provided, shall be:

3 (A) Fined [~~not~~] no more than \$5,000 per violation for
4 a first violation or a violation beyond five
5 years of the last violation; provided that, after
6 written or verbal notification from the
7 department, an additional \$1,000 per day per
8 violation may be assessed for each day in which
9 the violation persists;

10 (B) Fined [~~not~~] no more than \$10,000 per violation
11 for a second violation within five years of the
12 last violation; provided that, after written or
13 verbal notification from the department, an
14 additional \$2,000 per day per violation may be
15 assessed for each day in which the violation
16 persists;

17 (C) Fined [~~not~~] no more than \$20,000 per violation
18 for a third or subsequent violation within five
19 years of the last violation; provided that, after
20 written or verbal notification from the
21 department, an additional \$4,000 per day per



1 violation may be assessed for each day in which
2 the violation persists; and

3 (D) Liable for administrative costs and expenses
4 incurred by the department and for payment for
5 damages, including but not limited to natural
6 resource damages.

7 In addition to the fines, administrative costs, and
8 damages provided for hereinabove, for damage to or
9 theft of natural resources, the board may also set,
10 charge, and collect a fine that, in its discretion, is
11 appropriate considering the value of the natural
12 resource that is damaged or the subject of the theft.

13 In arriving at an appropriate fine, the board may
14 consider the market value of the natural resource
15 damaged or taken and any other factor it deems
16 appropriate, such as the loss of the natural resource
17 to its natural habitat and environment and the cost of
18 restoration or replacement. The remedies provided for
19 in this paragraph are cumulative and in addition to
20 any other remedies allowed by law.



1 No person shall be sanctioned pursuant to this section
2 for the exercise of native Hawaiian gathering rights
3 and traditional cultural practices as authorized by
4 law or as permitted by the department pursuant to
5 article XII, section 7, of the Hawaii state
6 constitution;

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

15 (17) Pledge or assign all or any part of the receipts and
16 revenues of the department. The revenue bonds shall
17 be payable from and secured solely by the revenue
18 derived by the department from the industrial park or
19 parks for which the bonds are issued;

20 (18) Reimburse the state general fund for debt service on
21 general obligation bonds or reimbursable general



1 obligation bonds issued by the State for purposes of
2 this chapter;

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

10 (20) Do any and all things necessary to carry out its
11 purposes and exercise the powers granted in this
12 chapter."

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

15 SECTION 4. This Act shall take effect upon its approval
16 and shall be repealed on June 30, 2026; provided that
17 section 171-6, Hawaii Revised Statutes, shall be reenacted in
18 the form in which it read on the day prior to the effective date
19 of this Act.

APPROVED this 06 day of JUL, 2021



GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 16, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate

THE HOUSE OF REPRESENTATIVES OF THE
STATE OF HAWAII

Date: April 8, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives