

JAN 27 2021

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

13 There are unimproved public lands in the State's inventory
14 that the State desires to develop for resort, commercial,
15 industrial, other business or residential use. However,
16 substantial investments in infrastructure including drainage,
17 sewer, water, electricity, and other utilities will be required
18 to facilitate development of the lands with costs in the tens of

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1 millions of dollars. The State desires to pass the
2 infrastructure and other development costs of these lands on to
3 a future lessee of the lands.

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

14 The purpose of this Act is to authorize the board of land
15 and natural resources to approve rental reductions or waivers
16 for leases that require substantial demolition costs or
17 infrastructure improvement costs in order for the lessee to
18 utilize the premises.

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

21 "**§171-6 Powers.** Except as otherwise provided by law, the
22 board of land and natural resources shall have the powers and

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1 functions granted to the heads of departments and the board of
2 land and natural resources under chapter 26.

3 In addition to the foregoing, the board may:

4 (1) Adopt a seal;

5 (2) Administer oaths;

6 (3) Prescribe forms of instruments and documents;

7 (4) Adopt rules which, upon compliance with chapter 91,
8 shall have the force and effect of law;

9 (5) Set, charge, demand, and collect reasonable fees for
10 the preparation of documents to be issued, for the
11 surveying of public lands, and for the issuing of
12 certified copies of its government records, which
13 fees, when collected, shall be deposited into the
14 state general fund, unless otherwise specified in this
15 chapter;

16 (6) Establish additional restrictions, requirements, or
17 conditions, not inconsistent with those prescribed in
18 this chapter, relating to the use of particular land
19 being disposed of, the terms of sale, lease, license,
20 or permit, and the qualifications of any person to
21 draw, bid, or negotiate for public land;

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- 1 (7) Reduce or waive the lease rental at the beginning of
2 the lease on any lease of public land to be used for
3 any agricultural or pastoral use, or for resort,
4 commercial, industrial, or other business use where
5 the land being leased requires substantial
6 improvements to be placed thereon; provided that such
7 reduction or waiver shall not exceed two years for
8 land to be used for any agricultural or pastoral use,
9 or exceed one year for land to be used for resort,
10 commercial, industrial, or other business use;
11 provided further that, if a lease for resort,
12 commercial, industrial, other business or residential
13 purposes requires a lessee to demolish existing
14 improvements or provide basic infrastructure including
15 drainage, sewer, water, electricity, and other
16 utilities before it can make productive use of the
17 land, the board may approve a reduction or waiver of
18 lease rental up to twenty years that shall not exceed
19 the amount of the lessee's total expenditures for
20 demolition or provision of such infrastructure;
21 (8) Delegate to the chairperson or employees of the
22 department of land and natural resources, subject to

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1 the board's control and responsibility, such powers
2 and duties as may be lawful or proper for the
3 performance of the functions vested in the board;

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

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

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

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

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

20 (B) Be fined not less than \$1,000 nor more than
21 \$4,000 per day upon the second offense and
22 thereafter;

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

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

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

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

16 (14) Set, charge, and collect additional rentals for the
17 unauthorized use of public lands by a lessee,
18 licensee, grantee, or permittee who is in violation of
19 any term or condition of a lease, license, easement,
20 or revocable permit, retroactive to the date of the
21 occurrence of the violation. Such amounts shall be
22 considered delinquent payments and shall be subject to

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1 interest and service charges as provided in paragraph
2 (13);

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

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

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

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1 \$2,000 per day per violation may be assessed for
2 each day in which the violation persists;

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

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

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

20 In arriving at an appropriate fine, the board may
21 consider the market value of the natural resource
22 damaged or taken and any other factor it deems

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

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

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

20 (17) Pledge or assign all or any part of the receipts and
21 revenues of the department. The revenue bonds shall
22 be payable from and secured solely by the revenue

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1 derived by the department from the industrial park or
2 parks for which the bonds are issued;

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

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

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

17 SECTION 3. New statutory material is underscored.

18 SECTION 4. This Act, upon its approval, shall take effect
19 on July 1, 2021, and shall be repealed on June 30, 2026;
20 provided that section 171-6, Hawaii Revised Statutes, shall be
21 reenacted in the form in which it read on June 30, 2021.

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INTRODUCED BY:

M. N. M.

2

BY REQUEST

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Report Title:

Board of Land and Natural Resources; Public Lands; Rental
Reduction of Waiver

Description:

Authorizes the Board of Land and Natural Resources to approve rental reductions or waivers for leases on public lands that require substantial demolition or infrastructure improvement costs in order for the lessee to utilize the premises.

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

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JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO RENTALS FOR PUBLIC LAND LEASES.

PURPOSE: To authorize the Board of Land and Natural Resources (Board) to approve rental reductions or waivers for leases on public lands that require substantial demolition or infrastructure improvement costs in order for the lessee to utilize the premises.

MEANS: Amend section 171-6, Hawaii Revised Statutes (HRS).

JUSTIFICATION: There are a number of long-term leases of public lands originally entered into in the 1940s that have expired in recent years. Some of these leases were used for hotels, and significant hotel improvements were constructed on the premises during the lease term. In some cases, the leasehold improvements have exceeded their useful life and require costly demolition in the range of \$8-10 million for a single property. However, the lease forms used for these leases did not require the lessee to remove the improvements at the expiration of the lease term. As a result, the demolition cost falls on the State unless the State can pass the cost on to a future lessee who undertakes redevelopment of the land.

Additionally, there are unimproved public lands in the State's inventory that the State desires to develop for resort, commercial, industrial, other business or residential use. However, substantial investments in infrastructure including drainage, sewer, water, electricity, and other utilities will be required to facilitate development of the lands with costs in the tens of millions of dollars. The State desires to pass the infrastructure

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and other development costs of these lands on to a future lessee of the lands.

Currently, chapter 171, HRS, limits the amount of rent reduction or waiver that a lessee of public lands can receive for redeveloping or improving public lands to one year's rent for land leased for resort, commercial, industrial, or other business use. In many cases, a rent reduction or waiver equal to one year of ground rent would be an insufficient incentive to induce a developer to invest in the demolition of aged improvements on and redevelopment of public land, or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public land.

This bill seeks to authorize the Board to approve a rent reduction or waiver for up to twenty years not to exceed the amount of the lessee's total expenditures for demolition of improvements or provision of infrastructure. This bill is part of an effort by the Department to bring its leasing practices to commercially reasonable standards.¹

Impact on the public: Would provide a lessee of the Department a rent reduction or waiver for up to twenty years, in the amount of total demolition and infrastructure costs.

Impact on the department and other agencies: The most significant impact on the Department would be having a property under lease and potentially not receiving rental income for twenty years. However, given the significant costs for demolition and removal of derelict improvements as well as providing infrastructure, the Department

¹ In addition to the proposed statutory changes, the Department retained a real estate consultant to review our lease forms and ancillary documents and provide recommendations to conform with current commercially reasonable leasing practices.

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does not have the resources to contract for such work. It is preferable to pass these obligations on to a potential lessee.

However, incentives must be provided in order to preserve demand for the property and make development feasible.

For example, the cost of demolition and removal of improvements at the former Uncle Billy's hotel site in Hilo has been estimated as high as \$10 million. The Department would require a capital improvement appropriation to do such work, which would compete with other funding priorities. Passing this cost on to a potential lessee without additional incentive would likely result in either no interest for the property, or at least severely limit potential lessees.

Furthermore, in the case of providing infrastructure, the lessee will assume a cost that will increase feasibility of development. The State will receive a benefit that may extend beyond the term of the lease. As any rent discount granted under this provision would be limited to twenty years, regardless of the costs incurred, the lessee would be encouraged to find cost effective solutions to address these issues.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2021, provided that the Act shall be repealed on June 30, 2026.