

JAN 26 2022

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

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PART I

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SECTION 1. The legislature finds that Article XI, section 1 of the state constitution provides that "[f]or the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people". The legislature believes that all public lands should be managed in the spirit of malama aina.

The legislature further finds that the United States military's use of public land has been inconsistent with the principle of malama aina. The legacy of Kahoolawe, Waikane, Makua, and Pohakuloa are tragic. On Kahoolawe, the United



1 States Navy failed to clear unexploded ordnance. Regarding
2 Makua, a federal court concluded that the United States Army
3 "failed to use good faith efforts to develop a plan and secure
4 funding for clearing [unexploded ordnance] from the high
5 priority sites that the Army was supposed to identify" pursuant
6 to a settlement agreement. According to a state circuit court,
7 portions of state land at Pohakuloa are heavily contaminated on
8 the surface with material potentially presenting an explosive
9 hazard and posing a significant danger to public health and
10 welfare.

11 The legislature also finds that the United State military's
12 sixty-five year leases are due to expire soon and believes it is
13 time to return those lands to the people of Hawaii.

14 Accordingly, the purpose of this part is to prohibit any
15 land disposition to the United States military that allows for
16 or facilitates any military training activities.

17 SECTION 2. Section 171-33, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§171-33 Planning; generally.** (a) Prior to any notice of
20 intended disposition, the board of land and natural resources
21 shall:



- 1 (1) Classify the land according to its use or uses as
2 provided in this chapter;
- 3 (2) Determine the specific use or uses for which the
4 disposition is intended;
- 5 (3) Parcel land into units of minimum size areas related
6 to the intended specific use or uses and sufficient
7 for an economic operation, hereinafter called an
8 "economic unit";
- 9 (4) Determine the requirements for the construction of
10 building or other improvements, which are necessary or
11 desirable to encourage the highest use of the land;
- 12 (5) Determine the upset price or lease rental, based upon
13 the fair market value of the land employed to the
14 specific use or uses for which the disposition is
15 being made, with due consideration for all of the
16 terms and conditions of the disposition;
- 17 (6) Determine the necessary conditions of disposition
18 which will discourage speculation;
- 19 (7) In the case of leases, determine the minimum tenure
20 necessary to support the intended use or uses and the



1 necessity for periodic rent openings in long-term
2 leases to assure the State a fair return;

3 (8) Prepare the proposed documents and make them available
4 for public inspection;

5 (9) Determine, two years before the expiration of the term
6 of any lease, whether the premises are to be demised
7 for the same use or uses under a new lease or whether
8 all or any part thereof is to be reserved for other
9 use or uses and then promptly notify the lessee of the
10 determination.

11 (b) The board of land and natural resources shall not
12 approve any land disposition to the United States military that
13 allows for or facilitates any military training activities on
14 the subject lands."

15 PART II

16 SECTION 3. The legislature finds that the State is the
17 custodian of Hawaii's lands and, when leasing them out, acts as
18 a landlord. Landlords commonly establish rules for their
19 tenants to protect the integrity and condition of the leased
20 property. When leasing out public lands, it is within the
21 State's authority to insist that its lessees protect the State's



1 environment and natural resources and refrain from actions that
2 threaten the health and safety of the State's residents.

3 Accordingly, the purpose of this part is to require that
4 any lease or lease extension between the State and the United
5 States Department of Defense or branches of the United States
6 military include certain provisions, including an
7 acknowledgement that the State retains authority over all
8 environmental matters within its jurisdiction.

9 SECTION 4. The Hawaii Revised Statutes is amended by
10 adding a new chapter to be appropriately designated and to read
11 as follows:

12 "CHAPTER

13 LEASES OF PUBLIC LANDS BY THE UNITED STATES MILITARY

14 § -1 Lease provisions. (a) Any lease of public lands
15 or any extension of any lease of public lands issued by the
16 State to the United States Department of Defense or any branch
17 of the United States military shall include provisions
18 acknowledging that the State and its political subdivisions
19 shall retain authority over all environmental matters within the
20 State's jurisdiction with regard to the subject public lands,
21 including any military facilities constructed on the lands.



1 (b) The lease or lease extension shall also include
2 provisions recognizing the State's authority over, and right to
3 intervene in, all matters affecting the health and safety of the
4 State's residents.

5 (c) The lease or lease extension shall expressly provide
6 that violation of state or federal environmental law, or any
7 law, rule, or order on a matter affecting the health and safety
8 of the State's residents, shall be grounds for terminating the
9 lease.

10 (d) Rents charged for all leases of public lands issued to
11 or extended with the United States Department of Defense or any
12 branch of the United States military shall be set at the fair
13 market value of the leased lands.

14 **§ -2 Leases and lease extensions.** No lease of public
15 lands or any extension of any lease of public lands shall be
16 issued by the State to the United States Department of Defense
17 or any branch of the United States military if the department or
18 branch is noncompliant with any order, consent decree, or
19 memoranda of agreement requiring the department or branch to
20 perform environmental maintenance or remediation activities with
21 regard to the subject public lands or any law, rule, or order on



1 a matter affecting the health and safety of the State's
2 residents."

3 PART III

4 SECTION 5. 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 6. New statutory material is underscored.

8 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: Clarence K. Freshher



Report Title:

DOD; DLNR; United States Military; Leases; Lease Extensions; Prohibitions; Public Lands

Description:

Prohibits the Department of Land and Natural Resources from approving any land disposition to the United States military that allows for or facilitates any military training activities on the subject lands. Requires that any lease or lease extension between the State and the US Department of Defense or branches of the US military include certain provisions, including an acknowledgement that the State retains authority over all environmental matters within its jurisdiction. Provides that violation of state or federal environmental law, or any law, rule, or order on a matter affecting the health and safety of the State's residents, shall be grounds for terminating the lease. Prohibits the State from leasing public lands to or extending the lease of the US Department of Defense or any branch of the US military if the department or branch is noncompliant with any environmental order, consent decree, or memoranda of agreement, or any law, rule, or order on a matter affecting residents' health and safety.

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