

JAN 21 2022

A BILL FOR AN ACT

RELATING TO THE LEASING OF PUBLIC LANDS BY THE MILITARY.

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

1 SECTION 1. The legislature finds that Article XI,
2 section 1, of the Hawaii State Constitution provides that:
3 For the benefit of present and future generations, the
4 State and its political subdivisions shall conserve
5 and protect Hawaii's natural beauty and all natural
6 resources, including land, water, air, minerals and
7 energy sources, and shall promote the development and
8 utilization of these resources in a manner consistent
9 with their conservation and in furtherance of the
10 self-sufficiency of the State. All public natural
11 resources are held in trust by the State for the
12 benefit of the people.

13 The legislature further finds that public lands should be
14 managed in the spirit of malama aina and that the military's use
15 of public land has been inconsistent with that spirit. The
16 legacy of Kahoolawe, Waikane, Makua, Pohakuloa, and Red Hill are
17 tragic. The Navy failed to clear all unexploded ordnance from



1 Kahoolawe. A federal court concluded that the Army "failed to
2 use good faith efforts to develop a plan and secure funding for
3 [clearing unexploded ordinance] from the high priority sites
4 that the Army was supposed to identify" in Makua pursuant to a
5 settlement agreement. Portions of the state land at Pohakuloa
6 are, according to a state circuit court, heavily contaminated on
7 the surface with material potentially presenting an explosive
8 hazard that pose a significant danger to public health and
9 welfare. Multiple fuel leaks at the Red Hill underground
10 storage facility contaminated Oahu's water supply.

11 The legislature recognizes and acknowledges the State's
12 kuleana to "take an active role" in preserving its trust lands,
13 as specified in *Ching v. Case*, 145 Haw. 148, 449 P.3d 1146
14 (2019).

15 The legislature believes that with sixty-five-year leases
16 to the military due to expire shortly, it is time to return
17 those lands to the people of Hawaii and limit the impacts to
18 Hawaii's precious natural and cultural resources.

19 The purpose of this Act is to require the board of land and
20 natural resources to adopt certain restrictions regarding land
21 dispositions to the United States military.



1 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
2 amended by adding a new section to part II, subpart B, to be
3 appropriately designated and to read as follows:

4 "§171- Leases to the military. (a) Each applicant
5 that seeks to lease public lands for use by any branch of the
6 military shall consult with public trust beneficiaries before
7 submitting an application. The application shall include a
8 management plan that takes into consideration the input from the
9 consulted public trust beneficiaries.

10 (b) The board shall review the application and management
11 plan and determine:

12 (1) Whether the proposed activities further the public
13 interest; and

14 (2) Whether the management plan will use reasonable
15 management practices and prevent the degradation of
16 natural and cultural resources.

17 If the board determines that the management plan does not
18 further the public interest or prevent the degradation of
19 natural and cultural resources, the board shall deny the
20 application.



S.B. NO. 2843

1 (c) If a lease is approved, the management plan shall
2 become an exhibit to the lease.

3 (d) Each lease of public lands for use by any branch of
4 the military shall:

5 (1) Require the lessee to submit annual reports
6 demonstrating that the approved conditions or
7 management plan have been implemented and continue to
8 be met;

9 (2) Require a minimum annual rent based on the fair market
10 value of the lands to be leased, as determined by an
11 appraiser for the board. If the applicant does not
12 agree with the fair market value, the board shall have
13 sole discretion to resolve the dispute; provided that
14 the resolution is consistent with the public trust;

15 (3) Have a maximum term of ten years; and

16 (4) Prohibit the renewal or extensions of the terms.

17 (e) For the purpose of developing or assisting in the
18 development of any rule, enforcing this chapter, enforcing rules
19 adopted by the board, or determining compliance with any lease
20 entered into pursuant to this section, upon the request of the
21 department, the lessee shall:



S.B. NO. 2843

1 (1) Furnish information relating to the use of the leased
2 premises;

3 (2) Conduct monitoring or testing; and

4 (3) Permit a designated representative at all reasonable
5 times to have access to and to copy all records
6 relating to the leased property.

7 (f) For the purpose of developing or assisting in the
8 development of any rule, enforcing this chapter, enforcing rules
9 adopted by the board, or determining compliance with any lease
10 entered into pursuant to this section, any duly authorized
11 representative of the department may:

12 (1) Enter the leased public lands, including any
13 establishment or place on the leased lands, at
14 reasonable times; and

15 (2) Inspect, monitor, or test the soils, air, surface
16 water, or groundwater of the leased public lands.

17 (g) The public lands leased pursuant to this section, or
18 any portion thereof, shall be subject to withdrawal by the board
19 at any time during the term of the lease with reasonable notice
20 and compensation for public uses or purposes, including
21 residential, commercial, industrial, or resort developments, for



1 constructing new roads or extensions, or changes in line or
2 grade of existing roads, for rights-of-way and easements of all
3 kinds, and shall be subject to the right of the board to remove
4 soil, rock, or gravel as may be necessary for the construction
5 of roads and rights-of-way within or without the demised
6 premises.

7 (h) Upon the violation of any condition or term of any
8 lease to be observed or performed by the lessee or tenant
9 pursuant to this section, the board, after the notice of default
10 as provided in section 171-20, and subject to the rights of each
11 holder of record having a security interest as provided in
12 section 171-21, shall terminate the lease or tenancy and take
13 possession of the leased land, without demand or previous entry
14 and without legal process, together with all improvements placed
15 thereon, and shall retain all rent paid in advance as damages
16 for the violations.

17 (i) The board shall adopt rules pursuant to chapter 91 to
18 effectuate this section."

19 SECTION 3. New statutory material is underscored.



S.B. NO. 2843

1 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

Lana Acasio



S.B. NO. 2843

Report Title:

Department of Land and Natural Resources; Public Lands; Leases;
Military

Description:

Establishes duration, environmental, and other restrictions on
public lands leased to the military.

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