

JAN 18 2023

A BILL FOR AN ACT

RELATING TO THE BOARD OF LAND AND NATURAL RESOURCES.

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

1 SECTION 1. The legislature finds that, to effectively
2 manage public lands, oversight of how the lands are used is
3 necessary to ensure that Hawaii's people thrive. The department
4 of land and natural resources' land division has significant
5 discretion to revoke, limit, remove, or modify leases granted by
6 the department, issue condemnations, and rescind revocable
7 permits without prior approval from the board of land and
8 natural resources. Enhanced review of public land leases and
9 revocable permits would allow the State to ensure that the use
10 of public lands best benefits Hawaii's people.

11 The purpose of this Act is to limit the discretion of the
12 department of land and natural resources' land division by
13 requiring the board of land and natural resources to approve all
14 decisions to revoke, limit, condemn, remove, or modify the
15 department's leases and revocable permits.

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



1 "§171-6 Powers. Except as otherwise provided by law, the
2 board of land and natural resources shall have the powers and
3 functions granted to the heads of departments and the board of
4 land and natural resources under chapter 26.

5 In addition to the foregoing, the board may:

6 (1) Adopt a seal;

7 (2) Administer oaths;

8 (3) Prescribe forms of instruments and documents;

9 (4) Adopt rules [~~which, upon compliance with~~] pursuant to
10 chapter 91, which shall have the force and effect of
11 law;

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

19 (6) Establish additional restrictions, requirements, or
20 conditions, consistent with those prescribed in this
21 chapter, relating to the use of particular land being



1 disposed of [~~the~~]; terms of sale, lease, license, or
2 permit [~~the~~]; and [~~the~~] qualifications of any person to
3 draw, bid, or negotiate for public land;

- 4 (7) Reduce or waive the lease rental at the beginning of
5 the lease on any lease of public land to be used for
6 any agricultural or pastoral use, or for resort,
7 commercial, industrial, or other business use where
8 the land being leased requires substantial
9 improvements to be placed thereon; provided that the
10 reduction or waiver shall not exceed two years for
11 land to be used for any agricultural or pastoral use,
12 or exceed one year for land to be used for resort,
13 commercial, industrial, or other business use. When a
14 lease for resort, commercial, industrial, or other
15 business or residential purposes requires a lessee to
16 demolish existing improvements or provide basic
17 infrastructure, including drainage, sewer, water,
18 electricity, and other utilities, before the lessee
19 can make productive use of the land, the board may
20 approve a reduction or waiver of lease rental for a
21 period of up to twenty years; provided that the



1 aggregate amount of the reduced or waived lease rental
2 shall not exceed the amount of the lessee's total
3 expenditures for demolition or provision of the
4 infrastructure;

5 (8) Delegate to the chairperson or employees of the
6 department of land and natural resources, subject to
7 the board's control and responsibility, powers and
8 duties as may be lawful or proper for the performance
9 of the functions vested in the board; provided that
10 any decision relating to the revocation, limitation,
11 condemnation, removal, or modification of land leases
12 and revocable permits shall be subject to prior
13 approval by the board;

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

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



- 1 (11) Appoint hearing officers to conduct public hearings as
2 provided by law and under conditions as the board by
3 rules shall establish;
- 4 (12) Bring actions as may be necessary to remove or remedy
5 encroachments upon public lands. Any person causing
6 an encroachment upon public land shall:
- 7 (A) Be fined [nø] not more than \$1,000 a day for the
8 first offense;
- 9 (B) Be fined [nø] not 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 costs as may result from adverse effects
16 from 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 one



1 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. The amounts shall be
12 considered delinquent payments and shall be subject to
13 interest and service charges as provided in paragraph
14 (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
19 activity on public lands, or violating any of the
20 other 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 [~~ne~~] not 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 [~~ne~~] not 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 [~~ne~~] not 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 of 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
18 of restoration or replacement. The remedies provided
19 for in this paragraph are cumulative and in addition
20 to 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 XIII, section 7, of the Hawaii [~~state~~
6 ~~constitution~~]; State 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 INTRODUCED BY: *Maureen L. Frouge*



S.B. NO. 82

Report Title:

Department of Land and Natural Resources; Land Division; Board of Land and Natural Resources; Public Land Leases; Revocable Permits; Powers

Description:

Limits the discretion of the Department of Land and Natural Resources' Land Division by requiring the Board of Land and Natural Resources to approve all revoked, limited, condemned, removed, or modified public land leases or revocable permits.

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