

JAN 23 2026

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. The legislature finds that the State began
2 entering into \$1 commercial leases and government use contracts
3 for military and science usage of public lands in 1964. These
4 leases have enabled some of the most profitable institutions
5 throughout the country to generate hundreds of millions of
6 dollars while costing the State billions. Additionally, the
7 board of land and natural resources has acknowledged that the
8 State should no longer enter into commercial leases or
9 government use agreements for \$1 because the State ultimately
10 shoulders the responsibility of the lessee.

11 The legislature further finds that contractual agreements
12 of \$1 leases may be found unconscionable under common law.
13 Unconscionability in contracts may occur if there is procedural
14 or substantive unconscionability. Procedural unconscionability
15 is present when, during the contract's formation, at least one
16 party does not have fair or meaningful choice, there is
17 misrepresentation, or there is unequal bargaining power, among



1 other factors. Substantive unconscionability, on the other
2 hand, occurs when the contract's terms unfairly benefit or harm
3 one side, such as extremely unequal price compared to the value
4 exchanged. Additionally, a contract is most likely to be found
5 unconscionable if both unfair bargaining and unfair substantive
6 terms are shown. The governor has recently stated that he is
7 insisting on a "fair deal" related to the renewal of the United
8 States military's lease at the Pohakuloa training area. The
9 lease for the Pohakuloa training area was first signed in 1964
10 for \$1. However, the governor has suggested that a new lease
11 should be worth \$10 billion.

12 The legislature believes that requiring that all commercial
13 leases and government use agreements involving public lands be
14 issued at market rate will allow the State to generate
15 substantial revenue. This revenue could be used to lower costs
16 for the State's residents by building new homes to relieve
17 pressure on the State's housing market while also financially
18 empowering the State to invest in renewable energy and safer
19 infrastructure.

20 Accordingly, the purpose of this Act is to:



(1) Increase the maximum term for leases of public lands to ninety-nine years; and

(2) Prohibit commercial leases and government use agreements of public lands at rates below market rate, with exceptions.

SECTION 2. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided, the following restrictions shall apply to all leases:

(1) Options for renewal of terms are prohibited;

(2) No lease shall be for a longer term than [~~sixty-five~~ ninety-nine years, except in the case of a residential leasehold, which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Department of Veterans Affairs requirements; provided that the aggregate of the



1 initial term and extension shall in no event exceed
2 seventy-five years;

3 (3) No lease shall be made for any land under a lease that
4 has more than two years to run;

5 (4) No lease shall be made to any person who is in arrears
6 in the payment of taxes, rents, or other obligations
7 owed to the State or any county;

8 (5) No lease shall be transferable or assignable, except
9 by devise, bequest, or intestate succession; provided
10 that with the approval of the board, the assignment
11 and transfer of a lease or unit thereof may be made in
12 accordance with current industry standards, as
13 determined by the board; provided further that [~~prior~~
14 ~~to~~] before the approval of any assignment of lease,
15 the board shall have the right to review and approve
16 the consideration to be paid by the assignee and may
17 condition its consent to the assignment of the lease
18 on payment by the lessee of a premium based on the
19 amount by which the consideration for the assignment,
20 whether by cash, credit, or otherwise, exceeds the
21 depreciated cost of improvements and trade fixtures



1 being transferred to the assignee; provided further
2 that with respect to state agricultural leases, in the
3 event of foreclosure or sale, the premium, if any,
4 shall be assessed only after the encumbrances of
5 record and any other advances made by the holder of a
6 security interest are paid;

7 (6) The lessee shall not sublet the whole or any part of
8 the demised premises, except with the approval of the
9 board; provided that [~~prior to~~] before the approval,
10 the board shall have the right to review and approve
11 the rent to be charged to the sublessee; provided
12 further that in the case where the lessee is required
13 to pay rent based on a percentage of its gross
14 receipts, the receipts of the sublessee shall be
15 included as part of the lessee's gross receipts;
16 provided further that the board shall have the right
17 to review and, if necessary, revise the rent of the
18 demised premises based upon the rental rate charged to
19 the sublessee, including the percentage rent, if
20 applicable, and provided that the rent may not be
21 revised downward;



(7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise;

(8) Mineral and metallic rights and surface and ground water shall be reserved to the State; ~~and~~

(9) No lease of public lands, including submerged lands, or any extension of any lease of public lands shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for those purposes, unless the lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, that indicates the public's right to the use of the pier. The board, at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph.

~~[The term "lease", for]~~ For the purposes of this paragraph, "lease" includes month-to-month rental agreements and similar tenancies~~[.]~~; and



(10) No lease of public lands shall be issued by the State for a monetary amount that is below market rate; provided that this paragraph shall not apply to:

(A) The department of Hawaiian home lands;

(B) The transfer of land to another state department or agency; provided that the receiving department or agency shall retain the authority to lease the land to third parties; provided further that any lease to a third party shall not be below market rate; and

(C) Any ninety-nine-year leasehold-for-sale housing developments for residents of the State."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY:





S.B. NO. 2750

Report Title:

DLNR; Public Lands; Leases; Unconscionability; Market Rate

Description:

Increases the maximum term for leases of public lands to ninety-nine years. Prohibits commercial leases and government use agreements of public lands at rates below market rate, with exceptions.

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

