

ACT 55

S.B. NO. 2005

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature recognizes the unique and critical situation facing resort area lessees on Banyan Drive in Hilo, Hawaii. With the majority of the leases expiring in 2015, these lessees are faced with the uncertainty of continued tenancy. Under the current laws, as the end of the lease term nears, the lessees will have fewer incentives to make major investments in improvements to their infrastructure and ensure the long-term maintenance of their facilities. As a result, deterioration of the infrastructure is likely to occur.

Under this Act, one group of lessees would be exempted from the overall public policy of making public lands available to the highest qualified bidder at auctions. The legislature finds that except under rare circumstances, state leases have a maximum term of sixty-five years. Upon the expiration of leases, the property is made available to bidders via public auction. This method ensures maximum revenue generation for the beneficiaries of the public land trust. The legislature believes, however, that in this specific and unique case, an exception to this public policy is justified for the Banyan Drive lessees.

This exception is based on the fact that the State owns virtually the entire Banyan Drive resort area, which represents, approximately eighty per cent of total overnight accommodations in east Hawaii. Banyan Drive is an integrated resort area. All of the existing structures were built as hotels although not all are in hotel use at this time. It is important that the entire Banyan area be maintained as a resort area. Because the State controls so much of the hotel space in east Hawaii, the State has a responsibility to ensure that its actions will not have a harmful impact on the larger community as a whole. Should the State allow the Banyan Drive resort area to deteriorate, including the structures not currently used directly for hotel purposes, if and when the tourism market rebounds, east Hawaii will not be in a position to respond promptly with adequate hotel space. The negative impact would magnify as ancillary industries, dependent on the tourist market, would also suffer. Furthermore, approximately five hundred direct resort jobs would be affected, as well as many other indirect jobs.

The legislature finds that while an exception is justified regarding the public policy of making public lands available to the highest bidder, the legislature strongly

feels that the lessees should not be subsidized. It is the intention of the legislature to support the efforts of the State and the county of Hawaii and provide an opportunity for the tourism market to rebound in east Hawaii by ensuring that hotel rooms will still be available. If the current downturn reflects a more long-term structural shift in the east Hawaii tourism market, then the State should see the resort market adjust, including the possibility that the Banyan Drive properties be put to other uses.

The legislature further finds that prudent land management dictates that an exception be made in this specific case. As the landowner of virtually the entire Banyan Drive resort area, the State has an interest in preserving the significant value of these assets as the resort and other facilities represent millions of dollars worth of improvements on state land. Should the State allow these assets to deteriorate, the land value will decrease, thus lowering the value of all state land in the area.

The legislature believes that resort area use is the highest and best use of these properties at this time. Due to the downturn in the tourism market, demand is very weak for these leases as evidenced by the lack of interest shown in the one vacant lot where the former Orchid Isle Hotel once stood. As such, it would be unwise to force these leases into auction and risk deterioration of the improvements and loss of income should the existing lessees decide not to continue.

Lastly, the legislature finds that the state and county governments are actively attempting to develop east Hawaii as a visitor destination area marketed, among other things, around the University of Hawaii, astronomy, geology/volcanoes, eco-tourism, and culture and the arts.

The purpose of this Act is to stimulate tourism in east Hawaii by creating incentives for reinvestment in the resort and other infrastructure of the Banyan Drive resort area in Hilo, Hawaii. This Act authorizes the board of land and natural resources to issue new leases to existing lessees of the Banyan Drive resort area as an integral part of preserving and enhancing the tourism base of east Hawaii.

This Act affects fifteen total leases in the Banyan Drive resort area. Of these fifteen leases, there are ten leases covering three resort facilities (Naniloa, Hilo Bay, and Hilo Hawaiian), three leases for each of three apartment/condominium facilities (Country Club, Bayview Banyan, and Reed's Bay), one golf course lease, and one restaurant lease.

SECTION 2. Notwithstanding any law to the contrary, the department of land and natural resources is authorized to issue new leases to the existing Banyan Drive lessees, subject to the following:

- (1) New leases shall contain those conditions deemed appropriate by the department to carry out the purposes of this Act;
- (2) The department shall develop a process to ensure that the assumption of no market demand for the leases holds true. As such, the department may issue a request for proposal or other means to ensure that a fair, open, and competitive process is used to determine competition. This process shall take into account the current fair market value of the tenant-owned improvements under the terms of the existing lease. The current fair market value shall be negotiated and agreed to between the lessee and the lessor. If the current fair market value is agreed upon, the department may initiate a request for proposal process to reveal whether there are other entities seriously interested in obtaining the lease. If this process shows a willing and able bidder, the department shall go out for auction with the understanding that the successful bidder shall pay the existing lessee the current fair market value in full at closing. If there are no qualified entities, or if the lessee is the successful bidder, then a new lease may be issued to the existing lessee for a term not to exceed fifty-five years; and

- (3) If a new lease is issued, then the following may be contained in the lease:
- (A) Fair market rent, excluding tenant improvements;
 - (B) Percentage rent where gross receipts exceed a certain level;
 - (C) Assignment premium; and
 - (D) Requirements to substantially improve the property.

SECTION 3. It is the expressed intent of this Act that the legislature not interfere with market forces by subsidizing these resort area uses to ensure that the State is receiving a fair return from public lands and that investment is made into the infrastructure associated with the leases.

SECTION 4. The lands eligible for lease under section 2 of this Act shall be limited to those existing fifteen state leases with infrastructure located in the Banyan Drive resort area.

SECTION 5. All costs for the issuance of a new lease, including determining the current fair market value and the request for proposals, shall be paid for by lessees interested in acquiring new leases.

SECTION 6. This Act shall take effect on July 1, 2000, and shall be repealed on July 1, 2005.

(Approved April 26, 2000.)