

ACT 168

H.B. NO. 1823

A Bill for an Act Relating to Public Lands.

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

SECTION 1. The legislature finds that mediation is an effective method of resolving disputes that should be made available to resolve disputes regarding the fair market value or fair market rental of public lands in transactions involving the board of land and natural resources and private purchasers, owners, or leaseholders. The legislature further finds that the present statutory framework for the arbitration of such disputes is cumbersome and does not provide the parties an opportunity to work collaboratively toward mutual solutions to disputes.

The purpose of this Act is to authorize the board of land and natural resources to provide for nonbinding mediation of disputes regarding the fair

market value of public lands in transactions involving the purchase, lease, or repurchase of the public lands and the fair market rental of public lands under lease when rentals are reopened. This Act also preserves the option of binding arbitration to resolve disputes when the mediation process fails to do so.

SECTION 2. Section 171-17, Hawaii Revised Statutes, is amended by amending subsections (b) through (e) to read as follows:

"(b) The sale price or lease rental of lands to be disposed of by drawing or by negotiation shall be no less than the value determined by:

- (1) An employee of the board qualified to appraise lands; or
- (2) A disinterested appraiser or appraisers whose services shall be contracted for by the board, and ~~[such]~~ the appraisal, and any further appraisal with the approval of the board, shall be at the cost of the purchaser;

provided that the sale price or lease rental shall be determined by disinterested appraisal whenever prudent management so dictates; provided further that ~~[should]~~ if the purchaser ~~[fail to]~~ does not agree upon the sale price or lease rental, the purchaser may appoint an appraiser who shall conduct an appraisal on behalf of the purchaser. If, after the purchaser's appraisal, the board and the purchaser do not agree on the sale price or lease rental, the parties shall make a good faith effort to resolve the dispute through nonbinding mediation by a single mediator, appointed by mutual agreement of the parties. The cost of mediation shall be borne equally by the parties. If mediation does not resolve the dispute, the purchaser's appraiser together with the board's appraiser shall appoint a third appraiser, and the sale price or lease rental shall be determined by arbitration as provided for in chapter 658A, which shall be final and binding. The purchaser shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the purchaser and the board.

(c) In the repurchase of any land by the board, the board shall have the option to repurchase the land for the original sale price or the fair market value at the time of repurchase, whichever is the lower. Any improvements affixed to the realty shall be purchased at their fair market value. At the time of the repurchase, the fair market value of the land, and the improvements, if any, shall be determined by a qualified appraiser whose services shall be contracted for by the board; provided ~~[should]~~ that if the owner ~~[fail to]~~ does not agree upon the value, the owner may appoint the owner's own appraiser who shall conduct an appraisal on behalf of the owner. If, after the owner's appraisal, the board and the owner do not agree on the sale price, the parties shall make a good faith effort to resolve the dispute through nonbinding mediation by a single mediator, appointed by mutual agreement of the parties. The cost of mediation shall be borne equally by the parties. If mediation does not resolve the dispute, the owner's appraiser together with the board's appraiser shall appoint a third appraiser, and the value shall be determined by arbitration as provided in chapter 658A. The owner shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the ~~[purchaser]~~ owner and the board.

(d) ~~[In the event of]~~ If a reopening of the rental to be paid on a lease~~[-]~~ occurs, the rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by:

- (1) An employee of the department qualified to appraise lands; or
- (2) A disinterested appraiser whose services shall be contracted for by the board;

and the lessee shall be promptly notified of the determination~~[-]~~ and provided with the complete appraisal prepared by the board or the board's appraiser; pro-

ACT 168

vided that ~~[should]~~ if the lessee ~~[fail to]~~ does not agree upon the fair market rental, the lessee may appoint the lessee's own appraiser [who together with the board's appraiser shall appoint a third appraiser] and the lessee shall provide the board with the complete appraisal prepared by the lessee's appraiser. Each party shall pay for its own appraiser. If the board's and the lessee's appraisers do not agree upon the lease rental, the lessee and the board shall in good faith attempt to resolve the dispute by nonbinding mediation by a single mediator mutually agreed upon by the parties. If the dispute is not resolved by the mediation, the fair market rental shall be determined by arbitration as provided in chapter 658A[-The lessee shall pay for the lessee's own appraiser, the board shall pay for its appraiser, and the cost of the third appraiser], which shall be final and binding. Either the board or the lessee may initiate arbitration by a written demand to the other party. The arbitration shall be conducted by a single arbitrator, who shall be an attorney licensed in the State, a person with experience in contracts and real estate valuation, or another qualified person, who shall be mutually agreed upon by the parties. If an arbitrator is not selected within fifteen days of the demand for arbitration, appointment of an arbitrator may be requested by either party by motion made to the circuit court in the circuit in which the land is located. The cost of mediation or arbitration shall be borne equally by the lessee and the board. Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six-month notice required, shall apply to leases with original lease rental reopening dates effective before and after July 1, 1996.

(e) ~~[Whenever more than one appraiser is appointed each shall prepare and submit an independent appraisal. All]~~ Complete appraisal reports, including all comparables relied upon in the appraisal reports, shall be available for study by the public. All complete appraisal reports shall be provided to the opposing party prior to the commencement of mediation or arbitration, if applicable, of the valuation dispute."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2014.

(Approved July 1, 2014.)