

**ACT 222**

S.B. NO. 1166

A Bill for an Act Relating to Rentals for Public Land Leases.

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

SECTION 1. The legislature finds that there are a number of long-term leases of public lands originally entered into in the 1940s that have expired in recent years. Some of these leases were used for hotels, and significant hotel improvements were constructed on the premises during the lease term. In some

cases, the leasehold improvements have exceeded their useful life and require costly demolition in the range of \$8,000,000 to \$10,000,000 for a single property. However, the lease forms used for these leases did not require the lessee to remove the improvements at the expiration of the lease term. As a result, the demolition cost falls on the State unless the State can pass the cost on to a future lessee who undertakes redevelopment of the land.

The legislature further finds that there are unimproved public lands in the State's inventory that the State desires to develop for resort, commercial, industrial, or other business or residential use. However, substantial investments in infrastructure, including drainage, sewer, water, electricity, and other utilities, will be required to facilitate development of the lands with costs in the tens of millions of dollars. The legislature recognizes the State's desire to pass the infrastructure and other development costs of these lands on to a future lessee of the lands.

Furthermore, the legislature recognizes that chapter 171, Hawaii Revised Statutes, regarding conservation and resources, limits the amount of rent reduction or waiver that a lessee of public lands can receive for redeveloping or improving public lands to one year's rent for land leased for resort, commercial, industrial, or other business use. In many cases, a rent reduction or waiver equal to one year of ground rent would be an insufficient incentive to induce a developer to invest in the demolition of aged improvements on and redevelopment of public land, or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public land.

The purpose of this Act is to authorize the board of land and natural resources to approve rental reductions or waivers for leases that require substantial demolition costs or infrastructure improvement costs for the lessee to utilize the premises.

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

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

In addition to the foregoing, the board may:

- (1) Adopt a seal;
- (2) Administer oaths;
- (3) Prescribe forms of instruments and documents;
- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its government records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
- (6) Establish additional restrictions, requirements, or conditions, [~~not inconsistent~~] consistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be

placed thereon; provided that ~~[such]~~ the reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use, or exceed one year for land to be used for resort, commercial, industrial, or other business use~~[:]~~. When a lease for resort, commercial, industrial, or other business or residential purposes requires a lessee to demolish existing improvements or provide basic infrastructure, including drainage, sewer, water, electricity, and other utilities, before the lessee can make productive use of the land, the board may approve a reduction or waiver of lease rental for a period of up to twenty years; provided that the aggregate amount of the reduced or waived lease rental shall not exceed the amount of the lessee's total expenditures for demolition or provision of the infrastructure;

- (8) Delegate to the chairperson or employees of the department of land and natural resources, subject to the board's control and responsibility, ~~[such]~~ powers and duties as may be lawful or proper for the performance of the functions vested in the board;
- (9) Use arbitration under chapter 658A to settle any controversy arising out of any existing or future lease;
- (10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;
- (11) Appoint ~~[masters of]~~ hearing officers to conduct public hearings as provided by law and under ~~[such]~~ conditions as the board by rules shall establish;
- (12) Bring ~~[such]~~ actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall:
  - (A) Be fined ~~[not]~~ no more than \$1,000 a day for the first offense;
  - (B) Be fined ~~[not]~~ no less than \$1,000 nor more than \$4,000 per day upon the second offense and thereafter;
  - (C) If required by the board, restore the land to its original condition if altered and assume the costs thereof;
  - (D) Assume ~~[such]~~ costs as may result from adverse effects from ~~[such]~~ restoration; and
  - (E) Be liable for administrative costs incurred by the department and for payment of damages;
- (13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month and the service charge shall not exceed \$50 a month for each delinquent payment; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged;
- (14) Set, charge, and collect additional rentals for the unauthorized use of public lands by a lessee, licensee, grantee, or permittee who is in violation of any term or condition of a lease, license, easement, or revocable permit, retroactive to the date of the occurrence of the violation. ~~[Such]~~ The amounts shall be considered delinquent payments and shall be subject to interest and service charges as provided in paragraph (13);
- (15) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person engaging in any prohibited use of public lands or conducting any prohibited activity on

public lands, or violating any of the other provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be:

- (A) Fined ~~not~~ no more than \$5,000 per violation for a first violation or a violation beyond five years of the last violation; provided that, after written or verbal notification from the department, an additional \$1,000 per day per violation may be assessed for each day in which the violation persists;
- (B) Fined ~~not~~ no more than \$10,000 per violation for a second violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$2,000 per day per violation may be assessed for each day in which the violation persists;
- (C) Fined ~~not~~ no more than \$20,000 per violation for a third or subsequent violation within five years of the last violation; provided that, after written or verbal notification from the department, an additional \$4,000 per day per violation may be assessed for each day in which the violation persists; and
- (D) Liable for administrative costs and expenses incurred by the department and for payment for damages, including but not limited to natural resource damages.

In addition to the fines, administrative costs, and damages provided for hereinabove, for damage to or theft of natural resources, the board may also set, charge, and collect a fine that, in its discretion, is appropriate considering the value of the natural resource that is damaged or the subject of the theft. In arriving at an appropriate fine, the board may consider the market value of the natural resource damaged or taken and any other factor it deems appropriate, such as the loss of the natural resource to its natural habitat and environment and the cost of restoration or replacement. The remedies provided for in this paragraph are cumulative and in addition to any other remedies allowed by law.

No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to article XII, section 7, of the Hawaii state constitution;

- (16) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this chapter. All revenue bonds shall be issued in the name of the department and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding thirty years from the date of issuance;
- (17) Pledge or assign all or any part of the receipts and revenues of the department. The revenue bonds shall be payable from and secured solely by the revenue derived by the department from the industrial park or parks for which the bonds are issued;
- (18) Reimburse the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for purposes of this chapter;
- (19) Notwithstanding part II of chapter 205A to the contrary, plan, design, construct, operate, and maintain any lands or facilities under the jurisdiction of the division of boating and ocean recreation of the department without the need to obtain a special management area minor permit or special management area use permit; and

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- (20) Do any and all things necessary to carry out its purposes and exercise the powers granted in this chapter.”

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

SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, 2026; provided that section 171-6, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved July 6, 2021.)