

JAN 24 2007

---

---

# A BILL FOR AN ACT

RELATING TO LEASEHOLDS.

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

1           SECTION 1. The legislature finds that elements of inequity  
2 exist in the relationships between lessors of commercial and  
3 industrial real property and lessees who have acquired long-term  
4 leasehold interests for the purpose of developing, operating,  
5 and subleasing the property. These inequities have become a  
6 detriment to Hawaii's business and economic environment and harm  
7 Hawaii's working and retired taxpayers.

8           The purpose of this Act is to:

- 9           (1) Create various protections for lessees who have long-  
10           term leasehold interests in commercial and industrial  
11           property; and
- 12           (2) Exclude proceeds from the sale of commercial or  
13           industrial property, where the lessor sells the  
14           property to the lessee at the termination or  
15           expiration of the leasehold agreement, from gross  
16           income, adjusted gross income, and taxable income.



1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new section to be appropriately designated and to read  
3 as follows:

4 "§ - Commercial and industrial property lease  
5 agreements. Notwithstanding any existing statute to the  
6 contrary, a lessee who enters into an agreement with a lessor  
7 for a leasehold interest in commercial or industrial property in  
8 the aggregate of more than fifty thousand square feet, shall be  
9 entitled to the following rights, protections, and  
10 considerations:

- 11 (1) Where a lease requires that the lessee obtain the  
12 approval of the lessor prior to transferring or  
13 encumbering an interest in the property, the lessor  
14 shall be prohibited from unreasonably withholding  
15 approval;
- 16 (2) Where a lease requires that the lessee obtain the  
17 approval of the lessor prior to making any repair or  
18 improvement on the property, the lessor shall be  
19 prohibited from unreasonably withholding approval;
- 20 (3) Where a lease requires that the lessee make  
21 substantial improvements, subsequent to the inception  
22 of the lease, to buildings or infrastructure on the



1 property, and where the term of the lease is less than  
2 thirty years, the lessee shall only be required to  
3 reasonably maintain the buildings and infrastructure  
4 after the improvements are made in a manner that  
5 satisfies any relevant federal, state, or county laws.

6 The lessee shall not be required to develop or  
7 construct any new building or infrastructure on the  
8 property;

9 (4) Where a lease requires that any improvements made by a  
10 lessee to the property revert back to the lessor at  
11 the expiration or termination of the lease, the lessor  
12 shall accept the improvements in their existing  
13 condition; provided that the existing condition is the  
14 result of the reasonable use of the improvements  
15 during the term of the lease; and

16 (5) Where a lease requires that a lessee pay a periodic  
17 increase in lease rent, the amount of the increase  
18 shall be derived from the financial feasibility of the  
19 increase based on the current use of the property."

20 SECTION 3. Section 235-7, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           "(a) There shall be excluded from gross income, adjusted  
2 gross income, and taxable income:

3           (1) Income not subject to taxation by the State under the  
4 Constitution and laws of the United States;

5           (2) Rights, benefits, and other income exempted from  
6 taxation by section 88-91, having to do with the state  
7 retirement system, and the rights, benefits, and other  
8 income, comparable to the rights, benefits, and other  
9 income exempted by section 88-91, under any other  
10 public retirement system;

11           (3) Any compensation received in the form of a pension for  
12 past services;

13           (4) Compensation paid to a patient affected with Hansen's  
14 disease employed by the State or the United States in  
15 any hospital, settlement, or place for the treatment  
16 of Hansen's disease;

17           (5) Except as otherwise expressly provided, payments made  
18 by the United States or this State, under an act of  
19 Congress or a law of this State, which by express  
20 provision or administrative regulation or  
21 interpretation are exempt from both the normal and

1           surtaxes of the United States, even though not so  
2           exempted by the Internal Revenue Code itself;

3           (6) Any income expressly exempted or excluded from the  
4           measure of the tax imposed by this chapter by any  
5           other law of the State, it being the intent of this  
6           chapter not to repeal or supersede any such express  
7           exemption or exclusion;

8           (7) Income received by each member of the reserve  
9           components of the Army, Navy, Air Force, Marine Corps,  
10          or Coast Guard of the United States of America, and  
11          the Hawaii national guard as compensation for  
12          performance of duty, equivalent to pay received for  
13          forty-eight drills (equivalent of twelve weekends) and  
14          fifteen days of annual duty, at an:

15          (A) E-1 pay grade after eight years of service;  
16                provided that this subparagraph shall apply to  
17                taxable years beginning after December 31, 2004;

18          (B) E-2 pay grade after eight years of service;  
19                provided that this subparagraph shall apply to  
20                taxable years beginning after December 31, 2005;



1 (C) E-3 pay grade after eight years of service;  
2 provided that this subparagraph shall apply to  
3 taxable years beginning after December 31, 2006;

4 (D) E-4 pay grade after eight years of service;  
5 provided that this subparagraph shall apply to  
6 taxable years beginning after December 31, 2007;  
7 and

8 (E) E-5 pay grade after eight years of service;  
9 provided that this subparagraph shall apply to  
10 taxable years beginning after December 31, 2008;

11 (8) Income derived from the operation of ships or aircraft  
12 if the income is exempt under the Internal Revenue  
13 Code pursuant to the provisions of an income tax  
14 treaty or agreement entered into by and between the  
15 United States and a foreign country, provided that the  
16 tax laws of the local governments of that country  
17 reciprocally exempt from the application of all of  
18 their net income taxes, the income derived from the  
19 operation of ships or aircraft that are documented or  
20 registered under the laws of the United States;



- 1           (9) The value of legal services provided by a prepaid  
2           legal service plan to a taxpayer, the taxpayer's  
3           spouse, and the taxpayer's dependents;
- 4           (10) Amounts paid, directly or indirectly, by a prepaid  
5           legal service plan to a taxpayer as payment or  
6           reimbursement for the provision of legal services to  
7           the taxpayer, the taxpayer's spouse, and the  
8           taxpayer's dependents;
- 9           (11) Contributions by an employer to a prepaid legal  
10          service plan for compensation (through insurance or  
11          otherwise) to the employer's employees for the costs  
12          of legal services incurred by the employer's  
13          employees, their spouses, and their dependents; [and]
- 14          (12) Amounts received in the form of a monthly surcharge by  
15          a utility acting on behalf of an affected utility  
16          under section 269-16.3 shall not be gross income,  
17          adjusted gross income, or taxable income for the  
18          acting utility under this chapter. Any amounts  
19          retained by the acting utility for collection or other  
20          costs shall not be included in this exemption[-]; and
- 21          (13) Amounts received from the sale of commercial or  
22          industrial real property, where the lessor of the



1           property sells the property in fee simple to the  
2           lessee upon the termination or expiration of the  
3           leasehold agreement."

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

6           SECTION 5. This Act shall take effect on July 1, 2007;  
7 provided that this Act shall not apply to any transactions  
8 entered into prior to the effective date of this Act.

9

INTRODUCED BY: *Franzanne Chun Calland*





**Report Title:**

Leaseholds; Commercial Property; Industrial Property

**Description:**

Creates protections for lessees of long-term commercial and industrial property lease agreements. Excludes proceeds from the sale of commercial or industrial property, where the lessor sells the property to the lessee at the termination or expiration of the leasehold agreement, from gross income, adjusted gross income, and taxable income.

