
A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1 PART I

2 SECTION 1. The legislature finds that small businesses are
3 an essential element in strengthening and diversifying Hawaii's
4 economy and creating jobs for our people. More than ninety-five
5 per cent of all Hawaii establishments are small businesses, and
6 they provide jobs for sixty per cent of all Hawaii employees.

7 The legislature further finds that despite their
8 contribution to Hawaii's economy, small businesses are at a
9 disadvantage in terms of land ownership. The commercial and
10 industrial properties that exist within the state's urban
11 districts are primarily owned by a few landowners. These
12 landowners control large tracts of land and retain their
13 ownership by means of leases to small businesses, which in turn
14 supply services and products to the communities within or
15 adjacent to the commercial and industrial properties. Without
16 these neighborhood businesses, consumers would be compelled to
17 travel long distances and expend large amounts of time and
18 effort to locate these needed services and products.

SB764 HD2 HMS 2009-3618



1 In the city and county of Honolulu's "Annual Report on the
2 Status of Land Use on Oahu, Fiscal Year 2006" (February 2008),
3 growth projections show a decided shift away from the primary
4 urban center for industrial jobs. Approximately eighty per cent
5 of industrial jobs were located in the primary urban center in
6 2000, and by 2030 that projection drops to seventy-one per
7 cent. During that same period, industrial jobs in the Ewa
8 region will nearly double, from seven to thirteen per cent, and
9 increase by nearly fifty per cent, from seven to ten per cent in
10 central Oahu.

11 The legislature further finds that small businesses often
12 depend on commercial and industrial leases, which may contain
13 provisions that are so vague or onerous that they force these
14 businesses to relocate to rural areas and away from the urban
15 centers.

16 The legislature further finds that the proximity of small
17 businesses to urban communities serves to stabilize Hawaii's
18 economy, especially during the recessionary period that the
19 United States has entered. Thus, maintaining close geographic
20 ties between small businesses and the communities they serve is
21 a public purpose that requires legislative support.



1 The purpose of this part is to stabilize Hawaii's economy
2 by addressing some of the burdensome or vague provisions of
3 existing commercial and industrial leases of certain lands
4 within urban districts by clarifying provisions in long-term
5 commercial and industrial ground leases, without substantial
6 reduction in the economic benefit to the owners or impact on
7 their ownership of the land, without impairing their lease
8 contracts, and without the taking of any property rights without
9 due process of law.

10 SECTION 2. Chapter 519, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "**§519- Leases of commercial and industrial property.**

14 (a) Notwithstanding any other law to the contrary and unless
15 expressly stated to the contrary in the lease, any lease of
16 commercial or industrial leasehold property shall be subject to
17 the following terms and conditions, whenever a lease existing on
18 July 1, 2009, or entered into thereafter, provides for the
19 renegotiation of the rental amount or other requirements during
20 the term of the lease and the renegotiated rental amount or
21 other recompense is based, according to the terms of the lease,



1 in whole or in part on a "fair and reasonable" annual rent as of
2 the commencement of the term, that provision shall:

3 (1) Be construed to require that the rent shall be fair
4 and reasonable to both the lessor and the lessee to
5 the lease; and

6 (2) Take into account any and all relevant attendant
7 circumstances relating to the lease, including:

8 (A) Past renegotiation practices and policies
9 throughout the previously renegotiated lease
10 rents;

11 (B) The uses and intensity of the use of the leased
12 property during the term of the lease approved by
13 the lessor;

14 (C) The surface and subsurface characteristics of the
15 leased property and the surrounding neighborhood
16 on the renegotiated date; and

17 (D) The gross income generated by the lessee on the
18 renegotiated date.

19 (b) For purposes of this section:

20 "Commercial or industrial leasehold property" means any
21 ground lease of real property:

22 (1) Situated in the state;



1 fifty-nine thousand six hundred ninety acres (class A, one
2 hundred twenty-five thousand one hundred sixty acres; class B,
3 two hundred thirty-four thousand five hundred thirty acres) in
4 1960 to one hundred seventy-two thousand ninety-four acres
5 (class A, fifty-six thousand six hundred fifty-three acres;
6 class B, one hundred fifteen thousand four hundred forty-one
7 acres) in 2007. The legislature finds that these agricultural
8 lands are a resource that is decreasing at an alarming rate due
9 to development in counties with large populations and high
10 demands for housing and sufficient and suitable agricultural
11 lands in counties with large populations are necessary for the
12 state's welfare and sustainability.

13 In light of the state's heavy reliance on imports of
14 agricultural products for consumption, the legislature finds
15 that any interruption of the shipping industry, without
16 sufficient availability of sustainable agricultural lands, would
17 negatively affect the health and welfare of the people of
18 Hawaii. The severe and irreversible loss of class A and B lands
19 demonstrates how vital it is to conserve Hawaii's most
20 productive agricultural lands, especially in counties with a
21 population of over five hundred thousand.



1 The purpose of this part is to carry out the mandate of
2 Article XI, section 3, of the Hawaii Constitution to conserve
3 and protect agricultural lands and assure availability of
4 agriculturally suitable lands in counties with a population of
5 over five hundred thousand.

6 SECTION 5. Chapter 519, Hawaii Revised Statutes, is
7 amended by adding a new section to be appropriately designated
8 and to read as follows:

9 "§519- Agricultural leases of real property. (a)

10 Whenever any agreement or document for the lease of private
11 agricultural lands with soil classified by the land study
12 bureau's detailed land classification as overall (master)
13 productivity rating class A or B for agricultural use in
14 counties with populations over five hundred thousand provides
15 for the renegotiation of the rental amount and the term of the
16 lease, and the lessee has made improvements or is seeking to
17 make improvements on the land, the renegotiated term of the
18 lease shall include an extension of the lease for a period of
19 not less than seventy-five per cent of the original term of the
20 lease.

21 (b) As used in this section, "lease" means a conveyance
22 leasing privately owned land by a fee simple owner as lessor, to



1 any person or entity for consideration of a return of rent or
2 other compensation."

3 SECTION 6. Section 205-3.1, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) District boundary amendments involving lands in the
6 conservation district, land areas greater than fifteen acres,
7 agricultural lands with soil classified by the land study
8 bureau's detailed land classification as overall (master)
9 productivity rating class A or B, or lands delineated as
10 important agricultural lands shall be processed by the land use
11 commission pursuant to section 205-4.

12 (b) Any department or agency of the State, and department
13 or agency of the county in which the land is situated, or any
14 person with a property interest in the land sought to be
15 reclassified, may petition the appropriate county land use
16 decision-making authority of the county in which the land is
17 situated for a change in the boundary of a district involving
18 lands less than fifteen acres presently in the rural and urban
19 districts and lands less than fifteen acres in the agricultural
20 district that are not agricultural lands with soil classified by
21 the land study bureau's detailed land classification as overall



1 (master) productivity rating class A or B, and are not
2 designated as important agricultural lands."

3 SECTION 7. Section 205-4, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) Any department or agency of the State, any department
7 or agency of the county in which the land is situated, or any
8 person with a property interest in the land sought to be
9 reclassified, may petition the land use commission for a change
10 in the boundary of a district. This section applies to all
11 petitions for changes in district boundaries of lands within
12 conservation districts, agricultural lands with soil classified
13 by the land study bureau's detailed land classification as
14 overall (master) productivity rating class A or B, lands
15 designated or sought to be designated as important agricultural
16 lands, and lands greater than fifteen acres in the agricultural,
17 rural, and urban districts, except as provided in section 201H-
18 38. The land use commission shall adopt rules pursuant to
19 chapter 91 to implement section 201H-38."

20 2. By amending subsection (h) to read:

21 "(h) No amendment of a land use district boundary shall be
22 approved unless the commission finds upon the clear



1 preponderance of the evidence that the proposed boundary is
2 reasonable, not violative of section 205-2 and part III of this
3 chapter, and consistent with the policies and criteria
4 established pursuant to sections 205-16 and 205-17[-]; provided
5 that for a boundary amendment for agricultural lands with soil
6 classified by the land study bureau's detailed land
7 classification as overall (master) productivity rating class A
8 or B, no amendment of a land use district boundary shall be
9 approved in counties with a population of over five hundred
10 thousand where:

- 11 (1) A farming operation as defined in section 165-2 is
12 being conducted on the land;
- 13 (2) The land is important for agriculture based on the
14 stock of similarly suited lands in the area;
- 15 (3) The proposed district boundary amendment will harm the
16 productivity or viability of existing agricultural
17 activity in the area; and
- 18 (4) The district boundary amendment will cause
19 fragmentation of or intrusion of nonagricultural uses
20 into largely intact areas of agricultural lands with
21 soil classified by the land study bureau's detailed



Report Title:

Leasehold; Commercial and industrial property; Agricultural
Lands

Description:

Clarifies provisions contained in long-term commercial and
industrial ground leases. Protects agriculturally suitable
lands. (SB764 HD2)

