
A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1 SECTION 1. In an editorial published in the Honolulu
2 Advertiser on February 15, 2009, United States Senator Daniel K.
3 Inouye stated, "Americans are struggling with the painful
4 effects of an economic crisis, the likes of which have not been
5 experienced since the Great Depression. If we are to renew the
6 promise of prosperity and opportunity in our nation, we must
7 first halt the downward economic spiral we now confront." The
8 national and state economies are in free-fall.

9 Businesses in Hawaii are very vulnerable during this time
10 of crisis. The State's primary industry, tourism, has been
11 hard-hit by this recession. Visitor arrivals to the State have
12 reached the lowest levels in thirty years with no relief in
13 sight until the end of next year. Hotel room rates are down
14 13.7 per cent. This affects not only the hotels, but also
15 restaurants, entertainment, retail, and transportation
16 businesses throughout the state that support the travel industry
17 or rely upon tourism.

1 During the fourth quarter of 2008, there were ten mass
2 layoffs in Hawaii that resulted in 1,217 workers losing their
3 jobs for at least thirty-one days. The current unemployment rate
4 of 4.9 per cent is the highest in nine years. Every day, there
5 are newspaper headlines about another layoff or business
6 closure. Local businesses are considering cutting their
7 employees' hours.

8 Hawaii's general fund tax collection in January 2009 was
9 down 4.9 per cent and transient accommodation tax collections
10 for the same month were down eight per cent. The Hawaii
11 Employees Retirement System has lost millions in value. The
12 State is considering furloughing employees.

13 Foreclosures and job losses are at record levels. Many
14 families are losing all income sources. There were 3,346 home
15 foreclosures in Hawaii last year and that number keeps rising.
16 The Honolulu Star-Bulletin recently reported that residential
17 foreclosures are up by one hundred seventy four per cent over
18 last year. The number of consumer bankruptcy filings in Hawaii
19 has nearly doubled in the last three years and repossessions of
20 automobiles and other personal property are at an all-time high.

21 It is very clear that unless our State government acts
22 quickly and decisively, our economic downward spiral will

1 continue. While many commercial, industrial, and retail
2 landlords have been working with their tenants to survive this
3 recession by making adjustments to rent on an ad hoc basis, some
4 landlords are increasing the rents for these properties.

5 The legislature finds that it is in the public interest
6 that its citizens remain employed, that businesses continue to
7 operate and pay wages and taxes, and that financial failures be
8 reduced. The legislature also finds that allowing unfair and
9 unreasonable rent increases for commercial, industrial, and
10 retail leases during this economic crisis will lead to more
11 unemployment and business closures and financial failures.
12 Accordingly, the legislature finds that there is a need to
13 alleviate the economic consequences of allowing unfair and
14 unreasonable rent increases for these properties until the local
15 economy improves.

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

19 **"§519- Leases of commercial and industrial property.**

20 **(a) Notwithstanding any other law to the contrary and unless**
21 **expressly stated to the contrary in the lease, any lease of**

1 commercial or industrial leasehold property shall be subject to
2 the following terms and conditions:

3 (1) Whenever a lease existing on July 1, 2009, or entered
4 into thereafter, provides for the renegotiation of
5 rent during the term of the lease and the renegotiated
6 rent is based, according to the terms of the lease, on
7 fair and reasonable annual rent as of the commencement
8 of the term, that provision shall:

9 (A) Be construed to require that the rent shall be
10 fair and reasonable to both the lessor and the
11 lessee to the lease; and

12 (B) Take into account the uses and intensity of use
13 approved by the lessor, and the surface and
14 subsurface characteristics of the site and the
15 neighborhood on the renegotiation date; and

16 (2) Unless as otherwise specified in the lease, if the
17 lessee has subtenants with subleases that provide for
18 recovery by the lessee of ground lease rent, those
19 subtenants shall be charged their pro-rata share of
20 the fair and reasonable annual rent as renegotiated
21 pursuant to this paragraph.

22 (b) For purposes of this section:

1 "Commercial or industrial leasehold property" means any
2 ground lease of real property:

- 3 (1) Situated in the State;
4 (2) Zoned by a county for commercial or industrial use;
5 (3) That is subject to a lease with a term of ten years or
6 more and an unexpired term of five years or more; and
7 (4) Where the lessor is the owner, directly or indirectly,
8 of an aggregate of fifty thousand square feet or more
9 of industrial and commercial property in the State.

10 "Lease" means a conveyance leasing privately owned land by
11 a fee simple owner as lessor, or by a lessee as sublessor, to
12 any person, for a term exceeding ten years in consideration of a
13 return of rent or other remuneration."

14 SECTION 3. This Act applies to any lease in effect on its
15 effective date, but does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun, before its effective date.

18 SECTION 4. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval.

Report Title:

Leasehold; Commercial and Industrial Property

Description:

Clarifies provisions contained in long-term commercial and industrial ground leases. (SD1)