
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.



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. In practical terms, consumers will find that the auto
16 service center or the small retailer in locations such as
17 Mapunapuna is no longer in business near where the consumer
18 lives or works.

19 The legislature further finds that the proximity of small
20 businesses to urban communities serves to stabilize Hawaii's
21 economy, especially during the recessionary period that the
22 United States has entered. Thus, maintaining close geographic



1 ties between small businesses and the communities they serve is
2 a public purpose that requires legislative support.

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

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

15 **"§519- Leases of commercial and industrial property.**

16 (a) Notwithstanding any other law to the contrary and unless
17 expressly stated to the contrary in the lease, any lease of
18 commercial or industrial leasehold property shall be subject to
19 the following terms and conditions:

20 (1) Whenever a lease existing on July 1, 2009, or entered
21 into thereafter, provides for the renegotiation of the
22 rental amount or other recompense during the term of



1 the lease and the renegotiated rental amount or other
2 recompense is based, according to the terms of the
3 lease, in whole or in part on a fair and reasonable
4 annual rent as of the commencement of the term, that
5 provision shall:

6 (A) Be construed to require that the rent shall be
7 fair and reasonable to both the lessor and the
8 lessee to the lease; and

9 (B) Take into account any and all relevant attendant
10 circumstances relating to the lease, including:

11 (i) Past renegotiation practices and policies
12 throughout the previously renegotiated lease
13 rents;

14 (ii) The uses and intensity of the use of the
15 leased property during the term of the lease
16 approved by the lessor;

17 (iii) The surface and subsurface characteristics
18 of the leased property and the surrounding
19 neighborhood of the leased property on the
20 renegotiated date; and

21 (iv) The gross income generated by the lessee on
22 the renegotiated date;



1 and
2 (2) Unless otherwise specified in the lease, if the lessee
3 has subtenants with subleases that provide for
4 recovery by the lessee of ground lease rent, those
5 subtenants shall be charged their pro rata share of
6 the fair and reasonable annual rent as renegotiated
7 pursuant to this section.

8 (b) For purposes of this section:

9 "Commercial or industrial leasehold property" means any
10 ground lease of real property:

- 11 (1) Situated in the state;
- 12 (2) Zoned by a county for commercial or industrial use;
- 13 (3) That is subject to a lease with a term of ten years or
14 more and an unexpired term of five years or more; and
- 15 (4) Where the lessor is the owner, directly or indirectly,
16 of fifty thousand square feet or more of industrial
17 and commercial property in the state.

18 "Lease" means a conveyance leasing privately owned land by
19 a fee simple owner as lessor, or by a lessee as sublessor, to
20 any person or entity, for a term exceeding ten years in
21 consideration of a return of rent or other remuneration."



1 SECTION 3. This part applies to any lease in effect on the
2 effective date of this Act, but does not affect rights and
3 duties that matured, penalties that were incurred, and
4 proceedings that were begun, before its effective date.

5 PART II

6 SECTION 4. The legislature finds that the land use law was
7 enacted to "preserve and protect land best suited for . . .
8 agricultural purposes and to facilitate sound and economical
9 urban development" (Senate Stand. Com. Rep. No. 580; 1961 Senate
10 Journal). Since that time, however, lands classified by the
11 land study bureau as class A and class B lands, the lands most
12 suited for intensive agricultural use, have declined from three
13 hundred fifty-nine thousand six hundred ninety acres (class A,
14 one hundred twenty-five thousand one hundred sixty acres; class
15 B, two hundred thirty-four thousand five hundred thirty acres)
16 in 1960 to one hundred seventy-two thousand ninety-four acres
17 (Class A, fifty-six thousand six hundred fifty-three acres;
18 Class B, one hundred fifteen thousand four hundred forty-one
19 acres) in 2007. These agricultural lands are a resource that
20 cannot be replaced once they are lost to development.

21 The inventory of lands that are suitable for agriculture is
22 essentially fixed. Unlike other agricultural inputs,



1 agricultural lands cannot be manufactured when the demand for
2 them increases. In 1960, the land study bureau estimated that
3 there were nearly three hundred sixty thousand acres of class A
4 and B lands on the six major islands. These were the lands upon
5 which the State depended for profitable, competitive
6 agricultural production. By 2007, the inventory of class A and
7 B lands had declined to slightly more than one hundred seventy-
8 two thousand acres, making it more important than ever to
9 conserve Hawaii's most productive agricultural lands, especially
10 in counties with a population of over five hundred thousand
11 residents.

12 The purpose of this part is to carry out the mandate of
13 Article XI, section 3, of the Hawaii Constitution to conserve
14 and protect agricultural lands and assure availability of
15 agriculturally suitable lands in counties with a population of
16 over five hundred thousand residents.

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

20 "§519- Agricultural leases of real property. (a)
21 Whenever any agreement or document for the lease of private
22 agricultural lands with soil classified by the land study



1 bureau's detailed land classification as overall (master)
2 productivity rating class A or B for agricultural use in
3 counties with populations of over five hundred thousand provides
4 for the renegotiation of the rental amount and the term of the
5 lease, and the lessee has made improvements or is seeking to
6 make improvements on the land, the renegotiated term of the
7 lease shall include an extension of the lease for a period of
8 not less than seventy-five per cent of the original term of the
9 lease.

10 (b) As used in this section, "lease" means a conveyance
11 leasing privately-owned land by a fee simple owner as lessor, to
12 any person or entity for consideration of a return of rent or
13 other compensation."

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

16 "(a) District boundary amendments involving lands in the
17 conservation district, land areas greater than fifteen acres,
18 agricultural lands with soil classified by the land study
19 bureau's detailed land classification as overall (master)
20 productivity rating class A or B, or lands delineated as
21 important agricultural lands shall be processed by the land use
22 commission pursuant to section 205-4.



1 (b) Any department or agency of the State, and department
2 or agency of the county in which the land is situated, or any
3 person with a property interest in the land sought to be
4 reclassified, may petition the appropriate county land use
5 decision-making authority of the county in which the land is
6 situated for a change in the boundary of a district involving
7 lands less than fifteen acres presently in the rural and urban
8 districts and lands less than fifteen acres in the agricultural
9 district that are not agricultural lands with soil classified by
10 the land study bureau's detailed land classification as overall
11 (master) productivity rating class A or B, and are not
12 designated as important agricultural lands."

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

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

16 "(a) Any department or agency of the State, any department
17 or agency of the county in which the land is situated, or any
18 person with a property interest in the land sought to be
19 reclassified, may petition the land use commission for a change
20 in the boundary of a district. This section applies to all
21 petitions for changes in district boundaries of lands within
22 conservation districts, agricultural lands with soil classified



1 by the land study bureau's detailed land classification as
2 overall (master) productivity rating class A or B, lands
3 designated or sought to be designated as important agricultural
4 lands, and lands greater than fifteen acres in the agricultural,
5 rural, and urban districts, except as provided in section 201H-
6 38. The land use commission shall adopt rules pursuant to
7 chapter 91 to implement section 201H-38."

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

9 "(h) No amendment of a land use district boundary shall be
10 approved unless the commission finds upon the clear
11 preponderance of the evidence that the proposed boundary is
12 reasonable, not violative of section 205-2 and part III of this
13 chapter, and consistent with the policies and criteria
14 established pursuant to sections 205-16 and 205-17[-]; provided
15 that for a boundary amendment for agricultural lands with soil
16 classified by the land study bureau's detailed land
17 classification as overall (master) productivity rating class A
18 or B, no amendment of a land use district boundary shall be
19 approved in counties with a population of over five hundred
20 thousand where:

21 (1) A farming operation as defined in section 165-2 is
22 being conducted on the land;



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. (HB1593 HD1)

