

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1           SECTION 1. The legislature finds that certain elements of  
2 inequity exist in the relationship of fee simple owners of  
3 commercial and industrial properties and holders of long-term  
4 leasehold interest in those properties who undertake the leases  
5 for the purpose of developing, improving, operating, and  
6 subletting the properties. These inequities accrue to the  
7 detriment of Hawaii's business and economic development and harm  
8 Hawaii's working and retired taxpayers. Uncomplicated and fair  
9 legislative remedies exist that can obviate these inequities.

10           The purpose of this Act is to implement certain conditions  
11 governing long-term leases of commercial and industrial  
12 properties.

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

16           "§519-       Leases of commercial and industrial property.

17           (a) Anything to the contrary notwithstanding, any lease of  
18 commercial or industrial leasehold property where the lessor is



1 the owner, directly or indirectly, of fifty thousand square feet  
2 or more of commercial or industrial leasehold property in the  
3 State shall be subject to the following terms and conditions:

4 (1) Whenever a lease condition requires that a lessee  
5 obtain the approval of the lessor for the assignment,  
6 transfer, or encumbrance of the leasehold property,  
7 the approval of the lessor may not be unreasonably  
8 withheld;

9 (2) Where a lessee is required by a lease with less than  
10 thirty years remaining on its term to make major and  
11 substantial improvements to any structures on the  
12 leasehold property or to any infrastructure supporting  
13 the leasehold property, the requirement to the lessee  
14 shall be limited to making reasonable maintenance and  
15 repair work to satisfy federal, state, and county  
16 laws, ordinances, and code requirements to ensure the  
17 public's health, safety, and welfare, and the lessee  
18 shall not be required to make substantial new  
19 improvements to infrastructure or structures;

20 (3) Where a lease provides for the reversion of any  
21 improvements on the leasehold property at the  
22 termination of the lease, the improvements shall be



1 returned subject to reasonable wear and tear that may  
2 have resulted from the use of the improvements over  
3 the full term of the lease;

4 (4) Where a lease provides for periodic step-ups in lease  
5 rent over the term of the lease, the increases in  
6 lease rent shall be determined, in part, on a  
7 determination of the financial feasibility of the rent  
8 increase in relation to the current use of the  
9 leasehold property; and

10 (5) In the event that a lessor determines to sell the  
11 leasehold interest and all improvements on the  
12 leasehold property to the lessee, the lessor shall be  
13 entitled to exclude from gross income subject to the  
14 tax imposed by chapter 235, in the year of the sale,  
15 any gain the lessor realizes from the sale.

16 (b) For purposes of this section, "commercial or  
17 industrial leasehold property" means any real property:

18 (1) Situated in the State;

19 (2) Zoned by a county for commercial, industrial, or mixed  
20 use; and

21 (3) That is subject to a lease with an unexpired term of  
22 twenty years or more."



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

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

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

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

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

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

19 (5) Except as otherwise expressly provided, payments made  
20 by the United States or this State, under an act of  
21 Congress or a law of this State, which by express  
22 provision or administrative regulation or



1 interpretation are exempt from both the normal and  
2 surtaxes of the United States, even though not so  
3 exempted by the Internal Revenue Code itself;

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

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

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

19 (B) E-2 pay grade after eight years of service;  
20 provided that this subparagraph shall apply to  
21 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;
- 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) One hundred per cent of the gain realized by a fee  
22          simple owner from the sale of a leased fee interest in



1 units within a condominium project, cooperative  
2 project, or planned unit development to the  
3 association of owners under chapter 514A or 514B, or  
4 the residential cooperative corporation of the  
5 leasehold units.

6 For purposes of this paragraph:

7 "Fee simple owner" shall have the same meaning as  
8 provided under section 516-1; provided that it shall  
9 include legal and equitable owners;

10 "Legal and equitable owner", and "leased fee  
11 interest" shall have the same meanings as provided  
12 under section 516-1; and

13 "Condominium project" and "cooperative project"  
14 shall have the same meanings as provided under section  
15 514C-1; [and]

16 (14) One hundred per cent of the gain realized by a lessor  
17 where the lessor is the owner, directly or indirectly,  
18 of fifty thousand square feet or more of commercial or  
19 industrial leasehold property in the State, upon the  
20 sale of the leasehold interest and all improvements on  
21 the leasehold property to the lessee in the year of  
22 sale.





1           For purposes of this paragraph:  
2                   "Commercial or industrial leasehold property"  
3           shall have the same meaning as provided in section  
4           519- ; and  
5                   "Lessor" and "lessee" shall have the same  
6           meanings as provided under section 516-1."

7           SECTION 4. This Act does not affect rights and duties that  
8           matured, penalties that were incurred, and proceedings that were  
9           begun, before its effective date.

10          SECTION 5. New statutory material is underscored.

11          SECTION 6. This Act shall take effect on July 1, 2009;  
12          provided that section 3 shall apply to taxable years beginning  
13          after December 31, 2009.

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INTRODUCED BY: Enzarne Chun Alalano  
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**Report Title:**

Real Property; Leasehold

**Description:**

Mandates certain conditions applicable to certain commercial and industrial leases. Exempts certain sales of fee interest to lessee from state income tax.

