
A BILL FOR AN ACT

RELATING TO LEASES.

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

1 SECTION 1. The legislature finds that ownership of
2 commercial and industrial land in Hawaii is concentrated in the
3 hands of a few landowners under the same oligopoly identified in
4 earlier legislative actions and court review. This condition, a
5 vestige from the historic days of the monarchy, has been
6 previously addressed by the legislature in order to correct
7 deficiencies in the residential leasehold market through the
8 Hawaii Land Reform Act of 1967. At the county level, the city
9 and county of Honolulu enacted section 91-95, Revised Ordinances
10 of Honolulu, to correct similar inequities in the residential
11 condominium market. These laws were deemed constitutional by
12 the United States Supreme Court in *Hawaii Housing Authority v.*
13 *Midkiff* when challenged by landowners.

14 According to the legislative reference bureau's Report No.
15 5, 2003, since a majority of urban industrial properties in this
16 State are in leasehold tenancy, the market valuations of these
17 properties have been affected by the speculative and investment
18 markets. The legislature finds landowners of commercial and



1 industrial ground leases have raised rents on the basis of these
2 artificial market values. Therefore, when drafting lease
3 contracts, landowners have included terms that allow them to
4 impose a rent rate, described as a market rate, that bears no
5 real relation with the risks attached to the investment. As a
6 result, ground rents of leasehold properties have increased far
7 beyond the inflation rate over the last thirty years. The
8 legislature further finds that as a result, leasehold tenancy
9 has created disincentives for lessees to maintain, repair,
10 renovate, or replace the improvements they have built on their
11 ground leases such that the economy of Hawaii has been, and
12 continues to be, harmed.

13 The legislature finds that Hawaii has an exceptionally high
14 rate of leasehold ownership, with approximately sixty per cent
15 of commercial and industrial land under leasehold as of 2003.
16 In the very near future, hundreds of commercial and industrial
17 leases will expire. This could potentially lead to hundreds of
18 businesses looking for suitable properties to which they can
19 relocate. The legislature further finds that the continuing
20 system of leasehold ownership frustrates necessary and rational
21 economic development in Hawaii because the leasehold system
22 defies the national trend in industrial and commercial real



1 estate, adversely affects amortization of loans, and deprives
2 ordinary citizens of the privilege of building equity and
3 bequeathing wealth to subsequent generations.

4 The legislature further finds that action taken to support
5 economic development is within its proper legislative powers and
6 is an obligation to the public that it must meet. Therefore,
7 the legislature seeks to establish an equitable means for both
8 parties entering into a long-term ground lease to realize a
9 sustainable and fair economic return on their respective
10 investments. The legislature further finds that so long as
11 there is a significant number of leasehold tenants of ground
12 leases in the industrial and commercial market that it is
13 important to the economy of the State that there be a reasonable
14 relationship between how rent is established for land subject to
15 a ground lease and the income-earning capacity of that land, as
16 improved. This principle is best effected through the use of
17 residual techniques in valuing land while there is a
18 disproportionate amount of land in leasehold estate.

19 The purpose of this Act is to require certain lessors of
20 new ground leases for commercial and industrial property to
21 provide existing lessees the opportunity to enter into new
22 leases on terms that are fair and reasonable to both parties.



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

4 "CHAPTER

5 REAL PROPERTY COMMERCIAL AND INDUSTRIAL LEASES

6 § -1 Definitions. As used in this chapter, unless the
7 context clearly requires otherwise:

8 "Excess rent" means the amount by which a contract rent
9 exceeds the market value for rent at the time of the appraisal,
10 created by a lease favorable to the landlord, lessor, or sub-
11 lessor, which may include unusual management; a lease execution
12 in an earlier, stronger rental market; or an agreement of the
13 parties. Due to the higher risk inherent in the receipt of
14 excess rent, it may be calculated separately and capitalized at
15 a higher rate in the income capitalization approach.

16 "Fee owner" means a person, corporation, firm, association,
17 partnership, limited liability company, trust, or estate that
18 owns the fee simple title to the real property leased under a
19 property development, and the person's or entity's heirs,
20 successors, legal representatives, and assigns; provided that if
21 more than one person or entity is the fee owner, the term "fee
22 owner" shall apply to each of them, jointly and severally. "Fee



1 owner" shall not include the State, any county, or any other
2 political subdivision of the State.

3 "Fee simple" or "fee simple interest" means the absolute
4 ownership of real property unencumbered by any other interest or
5 estate, subject only to the limitations imposed by the
6 governmental powers of taxation, eminent domain, police power,
7 and escheat.

8 "Lease" means the conveyance of land or an interest in land
9 larger than fifty thousand square feet by a fee owner or other
10 lessor to a lessee who owns the project situated on the land for
11 an original or extended lease term of five years or more in
12 exchange for payment of rent or other compensation; provided
13 that one hundred per cent of the land and any appurtenant
14 buildings are located on commercial, business, manufacturing,
15 mercantile, industrial, or other nonresidential property.

16 "Leased fee" means a freehold interest where the possessory
17 interest has been granted to another party by the creation of a
18 contractual landlord-tenant relationship, including a lease.

19 "Leasehold" or "leasehold interest" means the possessory
20 interest created by a lease.

21 "Lessee" means any person, corporation, firm, association,
22 partnership, limited liability company, trust, or estate that



1 owns a project and to whom land upon which the project is
2 situated is leased, including the person's or entity's heirs,
3 successors, legal representatives, and assigns; provided that if
4 more than one person or entity is a lessee, the term "lessee"
5 applies to each of them, jointly and severally.

6 "Lessor" means any person who leases land to another, and
7 the person's heirs, successors, legal representatives, and
8 assigns, but excludes the State and any county or other
9 political subdivision of the State.

10 "Market rent" or "fair market rent" is the most probable
11 rent that a property would bring in a competitive and open
12 market reflecting all conditions and restrictions of the lease
13 agreement, including permitted uses, use restrictions, expense
14 obligations, term, concessions, renewal and purchase options,
15 and tenant improvements.

16 "Master lease" means the dominant lease in a project issued
17 or assigned by the fee owner, or the lessor, to the owner of a
18 project, all or portions of which may be subleased to occupants.

19 "Uniform standards" means the current Uniform Standards of
20 Professional Appraisal Practice approved by the director of
21 commerce and consumer affairs pursuant to section 466K-4(a).



1 § -2 Agreement for the lease of private lands; lease
2 renegotiations; calculation of rent. After July 1, 2012,
3 whenever any agreement for the lease of private lands provides
4 for the renegotiation of the rental amount or other compensation
5 during the term of the lease, the amount of rental or other
6 compensation, shall be calculated based on the use to which the
7 land is restricted by the lease agreement; provided that:

8 (1) Fair market rent, or market rent per square foot,
9 shall be determined in conformance with the uniform
10 standards;

11 (2) Any disputes over value shall be settled by an
12 alternative dispute resolution procedure mutually
13 agreed to by the lessor and the lessee and not by
14 arbitration under chapter 658A; and

15 (3) Any other provision or remedy afforded to any class of
16 lessee under this chapter or in any other law relating
17 to the lease of real property shall be equally
18 available to all lessees and no provision, right,
19 benefit, or remedy afforded to any class of lessee or
20 tenant under this chapter or in any other law or rule
21 shall be denied to any other class, lessee, or tenant.



1 § -3 **Rules.** The department of business, economic
2 development, and tourism shall adopt rules pursuant to chapter
3 91 as may be necessary to implement the purposes of this
4 chapter.

5 § -4 **Applicability.** This chapter applies to all
6 projects over fifty thousand square feet that are occupied by
7 lessees pursuant to master leases whether executed before or
8 after the effective date of this chapter.

9 § -5 **Priority.** If this chapter conflicts with another
10 state law, this chapter shall prevail."

11 SECTION 3. Chapter 519, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§519- Commercial and industrial leases. (a) All new
15 ground leases of commercial, business, manufacturing,
16 mercantile, industrial, or other nonresidential property,
17 excluding property owned by the State and any county or other
18 political subdivision of the State entered into after July 1,
19 2012, that have a term of five years or more, including
20 extensions, renewals, or any other period accumulating to any
21 particular lease or tenant, the lessor shall afford the lessee



1 the option to renew the lease according to terms that are fair
2 and reasonable to both the lessor and lessee.

3 (b) For leases renewed under this section involving a fee
4 simple interest whose legal or equitable owner possesses an
5 interest in greater than fifty thousand square feet of land in
6 the State:

7 (1) The market rent or fair market rent shall be
8 established by an appraiser licensed or certified
9 under chapter 466K;

10 (2) The renewal period shall not be less than thirty-five
11 years, with a rent that is fixed for the initial
12 fifteen years and renegotiated every ten years
13 thereafter;

14 (3) When provided for in the lease agreement between the
15 lessor and lessee, during or after the fortieth year
16 of any ground lease between a lessor and a lessee, if
17 the lessor intends to acquire the leasehold interest
18 and improvements from the lessee, the lessor may do so
19 for a value to be determined by appraisal by an
20 appraiser licensed or certified under chapter 466K;
21 provided that the lessor notifies the lessee of such



1 intent at least five years prior to the end of any
2 fixed rent term; and

3 (4) Any increased value of the leasehold interest based on
4 excess rent shall be shared equitably between lessor
5 and lessee, with no less than five per cent and no
6 more than fifty per cent to be the lessor's share, as
7 determined by appraisal.

8 (c) This section shall apply to leases under which one
9 hundred per cent of the leased property is located on
10 commercial, business, manufacturing, mercantile, industrial, or
11 other nonresidential property over fifty thousand square feet.

12 (d) This section shall apply to a sublease as if it were a
13 lease, to a sublessee as if the sublessee were a lessee, and to
14 a sublessor as if the sublessor were a lessor.

15 (e) This section shall only apply to ground leases that
16 are in compliance with all other terms and conditions of the
17 lease agreement at the time of the rent reset period.

18 (f) The provisions of this section shall be part of and
19 incorporated into any lease subject to this section."

20 SECTION 4. New statutory material is underscored.

21 SECTION 5. This Act shall take effect on July 1, 2112.



Report Title:

Commercial and Industrial Leases; Renewal; Fair Market Value

Description:

Requires lessors of new ground leases of commercial and industrial property to afford existing lessees the option of entering into new leases on terms that are fair and reasonable to both parties. Effective July 1, 2112. (HB1829 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

