

JAN 20 2012

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# 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 who have refused to sell the fee  
4 simple titles to their lands, instead choosing to enter into  
5 long-term leases. These landowners have raised rents on the  
6 basis of artificial fair market values, and when land has been  
7 offered for sale, it has been offered at prices reflecting  
8 artificially created, speculative land values that do not  
9 reflect actual fair market values.

10           The legislature also finds that Hawaii has an exceptionally  
11 high rate of leasehold ownership, with approximately sixty per  
12 cent of commercial and industrial land under leasehold. In the  
13 very near future, hundreds of commercial and industrial leases  
14 will expire. This could potentially lead to thousands of  
15 businesses looking for suitable properties to which they can  
16 relocate.

17           The purpose of this Act is to:



1 (1) Require lessors of commercial and industrial property  
2 to afford lessees the option of renewing their leases;  
3 and

4 (2) Require, in leasehold renegotiations, that a rent  
5 based on fair market value shall apply even if the  
6 value is lower than the existing rent and the contract  
7 bars the lowering of rent upon renegotiation.

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

11 "§519- Commercial and industrial leases; renewal. (a)

12 For all leases of commercial, business, manufacturing,  
13 mercantile, or industrial or other nonresidential property, if  
14 for a term of five years or more, including extensions,  
15 renewals, or any other period accumulating to any particular  
16 lease or tenant, the lessor shall afford the lessee the option  
17 to renew the lease according to terms that are fair and  
18 reasonable to both the lessor and lessee.

19 (b) For leases renewed under this section:

20 (1) The rate of return shall be not more than five per  
21 cent; provided that if the lessor agrees to



1           subordinate the fee to the lease, the lessor and  
2           lessee may agree to any rate of return;

3           (2) The land value shall be:

4           (A) Established by an appraiser pursuant to chapter  
5           466K; and

6           (B) Based upon the tax-assessed valuation from 1985,  
7           adjusted by the increase in the consumer price  
8           index; and

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

13           (c) If the lessor and lessee are unable to agree on the  
14           terms for a lease renewal, the lessee shall have the option to:

15           (1) Purchase fee simple title to the property based upon  
16           the appraisal conducted under this section; or

17           (2) Decide not to purchase the fee simple title; provided  
18           that upon the lessee surrendering the lease and  
19           leasehold improvements to the lessor, a one hundred  
20           per cent windfall surcharge tax based upon the then  
21           tax-assessed valuation of the leasehold improvements  
22           made by the lessee shall be assessed to the lessor."



1 SECTION 3. 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 LEASES

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

8 "Fee owner" means the person who owns the fee simple title  
9 to the real property leased under a property development and the  
10 person's heirs, successors, legal representatives, and assigns.

11 "Lease" means the conveyance of land or an interest in land  
12 by a fee simple owner, or other lessor, to a lessee who owns the  
13 project situated on the land for an original or extended lease  
14 term of thirty years or more in consideration of payment of rent  
15 or other recompense.

16 "Leased fee" or "leased fee interest" means reversionary  
17 interests of the fee owner, lessor, and all legal and equitable  
18 owners of land that are leased, other than the lessee's or a  
19 sublessee's interest.

20 "Legal and equitable owners" means the fee simple owners  
21 and all persons having legal or equitable ownership interests in  
22 the leased fee or in the lessor's leasehold estate, including



1 mortgagees, developers, lienors, and sublessors, and their  
2 respective heirs, successors, legal representatives, and  
3 assigns.

4 "Lessee" means any person who owns a project and to whom  
5 land upon which the project is located is leased, including the  
6 person's heirs, successors, legal representatives, and assigns.

7 "Lessor" means any person who leases or subleases land to  
8 another, and the person's heirs, successors, legal  
9 representatives, and assigns.

10 "Lessors", "lessees", "fee owners", and "legal and  
11 equitable owners" include individuals, both masculine and  
12 feminine; corporations, firms, associations, partnerships,  
13 limited liability companies, trusts, and estates; and the State  
14 of Hawaii and any county or other political subdivision of the  
15 State. When more persons than one are the lessors, lessees, fee  
16 owners, or legal and equitable owners of a lot, the terms apply  
17 to each of them, jointly and severally.

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



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

4 § -2 Lease renegotiations; calculation of rent;

5 **definition.** Whenever any agreement or document for the lease of  
6 private lands provides for the renegotiation of the rental  
7 amount or other recompense during the term of the lease, and the  
8 renegotiated rental amount or other recompense is based,  
9 according to the terms of the lease, in whole or in part upon  
10 the fair market value of the land, or the value of the land as  
11 determined by its highest and best use, or words of similar  
12 import, such value, for the purposes of determining the amount  
13 of rental or other recompense, shall be calculated upon the use  
14 to which the land is restricted by the lease document; provided  
15 that:

16 (1) Fair market value per square foot shall be determined  
17 in conformance with the uniform standards;

18 (2) Any disputes over value shall be settled by the  
19 procedure selected by the lessee and not by  
20 arbitration under chapter 658A; and

21 (3) Any other provision or remedy afforded any class of  
22 lessee in this chapter or in any other law relating to



1 the lease of real property shall be equally available  
 2 to all lessees; and no provision, right, benefit, or  
 3 remedy afforded to any class of lessee or tenant by  
 4 this chapter or in any other law or rule shall be  
 5 denied to any other class, lessee, or tenant.

6 § -3 **Rules.** The Hawaii housing finance and development  
 7 corporation shall adopt rules pursuant to chapter 91 as may be  
 8 necessary to implement this chapter.

9 § -4 **Applicability.** This chapter applies to all  
 10 property developments that are occupied by lessees pursuant to  
 11 master leases whether executed before or after the effective  
 12 date of this chapter.

13 § -5 **Priority.** If this chapter conflicts with another  
 14 state law, this chapter shall prevail."

15 SECTION 4. New statutory material is underscored.

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

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*Carol Fuuunega*

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# S.B. NO. 2456

**Report Title:**

Commercial and Industrial Leases; Renewal; Fair Market Value

**Description:**

Requires lessors of commercial and industrial property to afford lessees the option of renewing their leases. Requires, in leasehold renegotiations, that a rent based on fair market value shall apply even if that value is lower than existing rent and the lease contract bars the lowering of rent upon renegotiation.

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

