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## A BILL FOR AN ACT

RELATING TO REAL PROPERTY LEASES.

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

1       SECTION 1. The legislature finds that leasehold ownership  
2 of land is, has been, and will be for the foreseeable future a  
3 common form of ownership of land in the State. Lease agreements  
4 generally contain a lease rent renegotiation provision that  
5 utilizes real property appraisals to determine the fair market  
6 value of the land, a critical component in the renegotiation  
7 process. Residential and commercial leases commonly are  
8 structured whereby the fee simple owner leases the land to the  
9 lessee, who as a sublessor may then sublease the land or a  
10 portion of the land to a sublessee.

11       The legislature finds that it is in the public interest  
12 that lease rent and sublease rent should be based on the fair  
13 market value of land. Existing leases commonly prohibit a  
14 reduction in rent at renegotiation even if a property appraisal  
15 determines that the lease rent based on the land's fair market  
16 value should be less than the current lease rent.



1           The legislature also finds that it is against public policy  
2 to enforce any provision of a long-term ground lease that  
3 prevents fair market rent to result from any rental rate  
4 renegotiation, provided that a renegotiation should not cause  
5 renegotiated rent to be less than the original negotiated rental  
6 amount.

7           The United States was built on the free market. This free  
8 market operates efficiently when the balance of supply and  
9 demand exists. When this dynamic is out of balance, financial  
10 abuses run rampant, and these abuses typically continue until  
11 either the marketplace equalizes (supply and demand reach a  
12 reasonable range of equilibrium), or rules along the lines of  
13 antitrust provisions are established. While monopolies and  
14 oligopolies can and do exist regarding many commodities and  
15 services, when the commodity or service is deemed to be a basic  
16 need for the general welfare and health of the people of a  
17 state, antitrust law or public utilities commissions are  
18 established, especially to regulate products or services that  
19 are deemed necessities.

20           In this State, the commodity of fee simple land has, in  
21 modern times, been a point of contention between large



1 landowners and everyone else who seeks to either have a place of  
2 business in the State or who chooses to reside in the State.  
3 This tension between large landowners and those who are not  
4 closely related to these large landowners has been ongoing and  
5 consistent. The intensity of this tension increased  
6 dramatically after the mid-1980s, as a result of substantial  
7 foreign investments in the State's fee simple real estate,  
8 primarily by Japanese investors. While the tremendous amount of  
9 Japanese investments in the United States were spread out over a  
10 number of states, the negative impact of these particular  
11 foreign investments in this State were felt far greater than in  
12 other states. This resulted from the relatively large  
13 proportion of the foreign investments into this State in  
14 relation to the total overall real estate investments in the  
15 State, and the fact that available fee simple real estate is  
16 relatively rare.

17 Other parts of the United States have seen tremendous  
18 increases in prices, followed by substantial decreases shortly  
19 after, and do not have a similar lack of available fee simple  
20 land that has plagued this State. Furthermore, and more  
21 importantly, most other parts of the United States do not and



1 did not have a substantial amount of their useable land area  
2 tied to ground leases -- especially ground leases that included  
3 provisions that would not allow subsequent ground lease rental  
4 rates to be adjusted to fair market value rental rates.

5 The bargaining power of the large landowners has dictated  
6 the form of ground leases, which have often included phrases  
7 similar to the infamous "not less than" clause, and became  
8 substantially abusive upon the "bursting of the bubble" of  
9 foreign investment into a sizable portion of the fee simple real  
10 estate in the State. Businesses large and small are especially  
11 vulnerable as a result of the limited availability of urban fee  
12 simple commercial and industrial properties, and financial  
13 abuses of these businesses result from this. In spite of the  
14 few new laws that have been enacted in an effort to eliminate  
15 these abuses, the financial abuses continue to be present, and  
16 typically occur upon renegotiation of long-term ground leases.

17 Accordingly, the purpose of this Act is to provide that  
18 lease rent based on fair market value, as determined by a real  
19 property appraisal, that is less than the rental amount  
20 currently being paid, shall prevail over an existing lease



1 contract provision that bars the lowering of lease rents upon  
2 renegotiation.

3 SECTION 2. Section 519-1, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) 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 such  
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 [-];  
15 provided that a renegotiation of the rental amount, based on  
16 fair market value as determined by a real property appraisal,  
17 may result in decreased rental recompense, notwithstanding any  
18 contract provision to the contrary."

19 SECTION 3. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



# H.B. NO. 1407

1           SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:

*Calvin L. Ay*  
*(By Request)*

JAN 25 2017



# H.B. NO. 1407

**Report Title:**

Real Estate; Leases; Renegotiations; Rent Decreases

**Description:**

Provides that a renegotiation of a lease may result in decreased rent, notwithstanding any contract provision to the contrary.

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