

JAN 26 2022

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. The legislature finds that the State has a
2 fiduciary duty to manage state lands in the best interests of
3 the public by enhancing state revenues and promoting social,
4 environmental, and economic well-being of Hawaii's people. As
5 the majority landowner in East Hawaii, the State has an enormous
6 influence on the vision, economic development, and overall
7 success of the East Hawaii community.

8 The legislature further finds that, under existing laws,
9 many public land lessees face uncertain futures following
10 expiration of their leases. In 2021, twelve applications for
11 lease extensions have been submitted. However, only one such
12 extension has been finalized. Lessees are further constrained
13 by the lengthy process to achieve approval from the board of
14 land and natural resources to conduct small maintenance projects
15 or major renovations. Despite improvements made by lessees, the
16 board of land and natural resources continually issues new
17 terms, making guidelines for lease improvements ambiguous. As a



1 result, the infrastructure and facilities on public lands in
2 East Hawaii have been deteriorating in many locations.

3 Additionally, lessees also face difficulties in
4 renegotiating leases with the board of land and natural
5 resources. The lessees work tirelessly to improve and
6 revitalize the Kanoelehua industrial area for the benefit of
7 neighbors and the State alike. Since lessees are making
8 continuous improvements to the lands, negotiations should favor
9 lessees by utilizing current tax assessed values to ease
10 difficulties in the negotiation process.

11 The legislature also finds that the Banyan drive area on
12 the Waiakea Peninsula in East Hawaii, Wailoa State Park, Wailoa
13 Estuary, and the commercial leases in the Kanoelehua Industrial
14 Area are currently facing this difficult economic challenge.
15 Due to the uncertainty regarding continued tenancy, despite East
16 Hawaii being the center of tourism for the island of Hawaii,
17 improvements have not been made and infrastructure has
18 deteriorated, leaving the region underutilized and in disrepair.
19 The legislature further finds that Hilo has the potential for
20 increased growth that can improve workforce and affordable
21 housing, parks and open space, public facilities, and



1 commercial, industrial, and hotel facilities, and a pilot
2 project in this area has the potential to revive public lands,
3 resulting in more tax revenue and community revitalization, and
4 be assessed to determine whether it can be replicated in other
5 areas of the State.

6 The purpose of this Act is to repeal requirements for
7 lessees to seek approval for lease extensions from the board of
8 land and natural resources and to require the department of land
9 and natural resources to utilize the current tax assessed value
10 for lease extensions.

11 SECTION 2. Section 171-192, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "~~[+]~~§171-192~~[+]~~ **Lease restrictions.** (a) The board, from
14 time to time, upon the issuance or during the term of any
15 intensive agricultural, aquaculture, commercial, mariculture,
16 special livestock, pasture, hotel, resort, or industrial lease
17 of public lands within the Hilo community economic district,
18 may~~[+]~~

19 ~~(1)~~ ~~Modify~~ modify or eliminate any of the restrictions
20 specified in section 171-36(a) ~~[+]~~



1 ~~(2) Extend or modify the fixed rental period or the term~~
2 ~~of the lease upon approval by the board of a~~
3 ~~development agreement proposed by the lessee to make~~
4 ~~substantial improvements to the existing improvements~~
5 ~~or to construct new substantial improvements so long~~
6 ~~as the length of any extension granted does not extend~~
7 ~~the original lease term by more than forty years; or~~
8 ~~(3) Extend the term and modify any provisions of the~~
9 ~~lease,~~
10 ~~to the extent necessary to qualify the lease for mortgage~~
11 ~~lending or guaranty purposes with any federal mortgage lending~~
12 ~~agency; to qualify the lessee for any state or private lending~~
13 ~~institution loan, private loan guaranteed by the State, or any~~
14 ~~loan in which the State and any private lender participates; or~~
15 ~~to amortize the cost of substantial improvements to the demised~~
16 ~~premises that are paid for by the lessee without institutional~~
17 ~~finaneing].~~

18 (b) Prior to entering into a development agreement, the
19 lessee or the lessee and developer shall submit to the board the
20 plans and specifications for the total development being
21 proposed. The board shall review the plans and specifications



1 ~~[and, in determining whether to approve the development~~
2 ~~agreement pursuant to subsection (a)(2),]~~ to consider:

3 (1) Whether the development proposed in the development
4 agreement is of sufficient worth and value to justify
5 the extension of the lease;

6 (2) The estimated period of time to complete the
7 improvements and expected date of completion of the
8 improvements; and

9 (3) The minimum revised annual rent based on the [~~fair~~
10 ~~market value]~~ current tax assessed value of the lands
11 to be developed, as determined by an appraiser for the
12 board, and the percentage of rent where gross receipts
13 exceed a specified amount.

14 (c) An application for an extension of the fixed rental
15 period or term of the lease shall be made to the department
16 which shall offer the lease fee amount based on the [~~economic~~
17 ~~life of the substantial improvements as determined by the board~~
18 ~~or an independent appraiser,]~~ current tax assessed value of the
19 leased premises and without the need for board approval;
20 provided that the approval of any extension shall be subject to
21 the following:



- 1 (1) The demised premises have been used substantially for
- 2 the purpose for which they were originally leased;
- 3 (2) The length of any extension granted for the fixed
- 4 rental period of the lease shall not extend the fixed
- 5 rental period of the original lease by more than forty
- 6 years;
- 7 (3) The length of any extension granted for the term of
- 8 the lease shall not extend the original lease term by
- 9 more than forty years;
- 10 (4) If a reopening occurs, the rental for any ensuing
- 11 period shall be the [~~fair market rental~~] current tax
- 12 assessed value as determined under section 171-17(d)
- 13 at the time of reopening;
- 14 (5) Any federal or private lending institution shall be
- 15 qualified to do business in the State;
- 16 (6) Proceeds of any mortgage or loan shall be used solely
- 17 for the operations or substantial improvements on the
- 18 demised premises;
- 19 (7) Where substantial improvements are financed by the
- 20 lessee, the lessee shall submit receipts of
- 21 expenditures within a time period specified by the



1 ~~[board,]~~ department, otherwise the lease extension
2 shall be canceled; and

3 (8) The rules of the board, setting forth any additional
4 terms and conditions, which shall ensure and promote
5 the purposes of the demised lands.

6 (d) The board, from time to time, during the term of any
7 agriculture, intensive agriculture, aquaculture, commercial,
8 mariculture, special livestock, pasture, hotel, resort, or
9 industrial lease of public lands within the Hilo community
10 economic district, may modify or eliminate any of the
11 restrictions specified in section 171-36(a) [~~, extend or modify~~
12 ~~the fixed rental period of the lease, or extend the term of the~~
13 ~~lease]~~ upon a showing of significant economic hardship directly
14 caused by:

15 (1) State disaster, pursuant to chapter 209, including
16 seismic or tidal wave, tsunami, hurricane, volcanic
17 eruption, typhoon, earthquake, flood, or severe
18 drought; or

19 (2) A taking of a portion of the area of the lease by
20 government action by eminent domain, withdrawal, or
21 conservation easement; provided that the portion taken



1 shall not be less than ten per cent of the entire
2 leased area unless otherwise approved by the board;
3 provided that the board determines that the lessee
4 will not be adequately compensated pursuant to the
5 lease provisions.

6 (e) The approval of any extension granted pursuant to
7 subsection (d) shall be subject to the following:

8 (1) The demised premises has been used substantially for
9 the purposes for which they were originally leased;

10 (2) The rental shall not be less than the rental for the
11 preceding term;

12 (3) The rules of the board, setting forth any additional
13 terms and conditions which shall ensure and promote
14 the purposes of the demised lands; and

15 (4) The length of the extension shall not exceed a
16 reasonable length of time for the purpose of providing
17 relief and shall in no case extend the original
18 lease's fixed rental period by more than forty years.

19 (f) The applicant for any lease extension pursuant to this
20 section shall pay all costs and expenses incurred by the
21 department in connection with the processing, analyzing, and



1 negotiating of any lease extension request and document and of
2 the development agreement under subsections (a) and (b)."

3 SECTION 3. Section 171-193, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[§171-193]~~ Lessees within the last ten years of their
6 lease terms; request for interest. (a) Notwithstanding any
7 other provision of law to the contrary, and except as otherwise
8 provided in section 171-192, a lessee of public land within the
9 Hilo community economic district that is classified as hotel,
10 resort, or commercial and industrial use pursuant to section
11 171-10, and that is subject to the management, administration,
12 or control of the board may, during the last ten years of the
13 term of the original lease, submit a written request to the
14 board to initiate a request for interest process as provided in
15 this section.

16 (b) Within one hundred eighty days of a lessee's written
17 request to initiate a request for interest, the board shall:

18 (1) Appraise the ~~[value of the land and any improvements~~
19 ~~to the land]~~ current tax assessed value that existed
20 as of the date of the written request pursuant to
21 section 171-17(a) ~~[and require the awardee of a new~~



1 ~~lease executed pursuant to this section to reimburse~~
2 ~~the department for the appraisal]; and~~

3 (2) Publish a request for interest and request for
4 qualifications notice inviting persons to express
5 their interest in leasing the land and their
6 qualifications as potential lessees and describing any
7 improvements to the land that exist as of the date of
8 the written request. The notice shall be given at
9 least once statewide and at least once in the county
10 where the land is located and shall contain:

11 (A) The qualifications required of eligible lessees
12 which shall conform to department policy for new
13 leases;

14 (B) A general description of the land, including the
15 address and tax map key, the termination date of
16 the existing lease, and ~~[of any improvements to~~
17 ~~the land]~~ the current tax assessed value that
18 existed as of the date of the written request;

19 (C) That the land to be leased is classified as
20 hotel, resort, or commercial and industrial use
21 pursuant to section 171-10;



1 (D) The [~~appraised value~~] current tax assessed value
2 of the land [~~and of any improvements to the land~~]
3 that existed as of the date of the written
4 request;

5 (E) The closing date and manner by which a person
6 shall indicate interest and submit a statement of
7 qualifications; and

8 (F) Notice that a current business plan is a
9 prerequisite to participate at time of auction or
10 direct negotiation, if applicable, and shall be
11 made a term of the lease.

12 (c) Within ninety days after the closing date specified in
13 the notice, the board shall determine if any persons have
14 qualified under the terms of the request for qualifications and
15 shall notify all persons who expressed interest as to whether
16 they qualified. Qualified bidders shall be required to deposit
17 an amount equal to one per cent of the value of the leasehold
18 improvements as determined by appraisal, but not less than
19 \$1,000, to be held in an interest bearing account as deposit by
20 the department and returned to the applicant at the applicant's
21 cancellation of interest, the applicant's unsuccessful bid at



1 auction, or as a credit against the applicant's successful bid
2 at auction. The board shall also notify the current lessee as
3 to whether any other persons qualified.

4 (d) The board shall proceed to dispose of the land in
5 accordance with section 171-41.6."

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

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

9

INTRODUCED BY: *Francis J. Brown*



S.B. NO. 3375

Report Title:

Board of Land and Natural Resources; Lease Extensions; Hilo
Community Economic District

Description:

Repeals the requirement for Board of Land and Natural Resources approval for lease extensions in the Hilo Community Economic District. Requires the Department of Land and Natural Resources to use the current tax assessed value when offering lease extensions to lessees.

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

