

JAN 18 2023

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 Act 149, Session
2 Laws of Hawaii 2018 (Act 149), established a ten-year pilot
3 project to authorize the board of land and natural resources to
4 extend leases of public lands in the Hilo community economic
5 district for the purpose of facilitating improvement and
6 economic opportunity in the area for lessees who commit to
7 making substantial improvements to the existing improvements or
8 constructing new substantial improvements.

9 In extending the lease of public lands in the Hilo
10 community economic district, Act 149 authorized the board of
11 land and natural resources to:

- 12 (1) Modify or eliminate any of the restrictions specified
13 in section 171-36(a), Hawaii Revised Statutes;
- 14 (2) Extend or modify the fixed rental period or the term
15 of the lease; provided that the board of land and
16 natural resources approves a development agreement
17 proposed by a lessee to make substantial improvements



1 to the existing improvements or to construct new
2 substantial improvements, so long as the extension
3 does not extend the original lease term by more than
4 forty years; or

5 (3) Extend the term and modify any provisions of the
6 lease, to the extent necessary to meet the
7 requirements of a lender or to amortize the cost of
8 the substantial improvements that will be paid for by
9 the lessee without institutional financing.

10 Noticeably missing from Act 149 is language that expressly
11 allows the board of land and natural resources to unilaterally
12 amend any terms and conditions of the extended lease to conform
13 to the most current lease form and leasing practices and
14 policies of the board of land and natural resources. The
15 legislature finds this to be in stark contrast to Act 219,
16 Session Laws of Hawaii, 2011 (Act 219), which was a similar
17 measure that authorized the board of land and natural resources
18 to extend hotel or resort leases for lessees who commit to
19 substantial improvement to the existing improvements and
20 contained specific language requiring any extension of a lease
21 granted under the measure to be executed using the most current



1 lease form and leasing practices and policies of the board of
2 land and natural resources.

3 The legislature also finds that Act 149 allows the board of
4 land and natural resources to subject its approval of lease
5 extensions to additional terms and conditions; provided that
6 such terms and conditions must be set in the rules adopted by
7 the board. The legislature finds, however, to this date, the
8 board of land and natural resources has not adopted any rules
9 governing the extension of leases of public lands under Act 149
10 or any other lease extensions permitted under chapter 171,
11 Hawaii Revised Statutes.

12 The legislature further finds that despite the foregoing,
13 the board of land and natural resources has been approving
14 extensions of leases pursuant to Act 149 by amending the lease
15 terms and conditions to conform to the board's most current
16 lease form and leasing practices and policies.

17 Accordingly, the purpose of this Act is to clarify that:

18 (1) The board of land and natural resources shall not
19 unilaterally amend the terms and conditions of any
20 lease of public lands being extended pursuant to Act



1 149, codified at part X of chapter 171, Hawaii Revised
2 Statutes, except as otherwise provided therein; and
3 (2) If the board of land and natural resources wishes to
4 amend the terms and conditions of any lease of public
5 lands being extended pursuant to Act 149 to reflect
6 the board's most current lease form and leasing
7 practices and policies, such lease form and leasing
8 practices and policies must be included in the rules
9 of the board governing the extension of leases
10 pursuant to Act 149 or chapter 171, Hawaii Revised
11 Statutes, adopted by the board in accordance with
12 chapter 91.

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

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



- 1 (1) Modify or eliminate any of the restrictions specified
2 in section 171-36(a);
- 3 (2) Extend or modify the fixed rental period or the term
4 of the lease upon approval by the board of a
5 development agreement proposed by the lessee to make
6 substantial improvements to the existing improvements
7 or to construct new substantial improvements so long
8 as the length of any extension granted does not extend
9 the original lease term by more than forty years; or
- 10 (3) Extend the term and modify any provisions of the
11 lease,
12 to the extent necessary to qualify the lease for mortgage
13 lending or guaranty purposes with any federal mortgage lending
14 agency; to qualify the lessee for any state or private lending
15 institution loan, private loan guaranteed by the State, or any
16 loan in which the State and any private lender participates; or
17 to amortize the cost of substantial improvements to the demised
18 premises that are paid for by the lessee without institutional
19 financing.
- 20 (b) Prior to entering into a development agreement, the
21 lessee or the lessee and developer shall submit to the board the



1 plans and specifications for the total development being
2 proposed. The board shall review the plans and specifications
3 and, in determining whether to approve the development agreement
4 pursuant to subsection (a)(2), consider:

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

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

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

16 (c) An extension of the fixed rental period or term of the
17 lease shall be based on the economic life of the substantial
18 improvements as determined by the board or an independent
19 appraiser; provided that the approval of any extension shall be
20 subject to 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 as determined
12 under section 171-17(d) at the time of reopening;
- 13 (5) Any federal or private lending institution shall be
14 qualified to do business in the State;
- 15 (6) Proceeds of any mortgage or loan shall be used solely
16 for the operations or substantial improvements on the
17 demised premises;
- 18 (7) Where substantial improvements are financed by the
19 lessee, the lessee shall submit receipts of
20 expenditures within a time period specified by the



1 board, otherwise the lease extension shall be
2 canceled; and

3 (8) The ~~[rules of]~~ most current lease form and leasing
4 practices and policies of the board~~[, setting forth~~
5 ~~any additional terms and conditions, which shall~~
6 ensure]; provided that the lease form and leasing
7 practices and policies shall:

8 (A) Ensure and promote the purposes of the demised
9 lands ~~[-]~~; and

10 (B) Be included in the rules of the board governing
11 the extension of leases of public lands pursuant
12 to this part or this chapter, adopted by the
13 board in accordance with chapter 91.

14 (d) The board, from time to time, during the term of any
15 agriculture, intensive agriculture, aquaculture, commercial,
16 mariculture, special livestock, pasture, hotel, resort, or
17 industrial lease of public lands within the Hilo community
18 economic district, may modify or eliminate any of the
19 restrictions specified in section 171-36(a), extend or modify
20 the fixed rental period of the lease, or extend the term of the



1 lease upon a showing of significant economic hardship directly
2 caused by:

3 (1) State disaster, pursuant to chapter 209, including
4 seismic or tidal wave, tsunami, hurricane, volcanic
5 eruption, typhoon, earthquake, flood, or severe
6 drought; or

7 (2) A taking of a portion of the area of the lease by
8 government action by eminent domain, withdrawal, or
9 conservation easement; provided that the portion taken
10 shall not be less than ten per cent of the entire
11 leased area unless otherwise approved by the board;
12 provided that the board determines that the lessee
13 will not be adequately compensated pursuant to the
14 lease provisions.

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

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

19 (2) The rental shall not be less than the rental for the
20 preceding term;



- 1 (3) The [~~rules of~~] most current lease form and leasing
2 practices and policies of the board[~~, setting forth~~
3 ~~any additional terms and conditions which shall~~
4 ~~ensure~~]; provided that the lease form and leasing
5 practices and policies shall:
- 6 (A) Ensure and promote the purposes of the demised
7 lands; and
- 8 (B) Be included in the rules of the board governing
9 the extension of leases of public lands pursuant
10 to this part or this chapter, adopted by the
11 board in accordance with chapter 91; and
- 12 (4) The length of the extension shall not exceed a
13 reasonable length of time for the purpose of providing
14 relief and shall in no case extend the original
15 lease's fixed rental period by more than forty years.
- 16 (f) The applicant for any lease extension pursuant to this
17 section shall pay all costs and expenses incurred by the
18 department in connection with the processing, analyzing, and
19 negotiating of any lease extension request and document and of
20 the development agreement under subsections (a) and (b).



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1 (g) Except as otherwise provided in this section, the
2 board shall not unilaterally amend the terms and conditions of
3 any lease of public lands being extended pursuant to this part.

4 (h) For the purposes of this section, "lease of public
5 lands" includes leases entered into through direct negotiation
6 without public auction and leases granted at public auction."

7 SECTION 3. 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 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval
13 and shall be repealed on June 30, 2028.

14

INTRODUCED BY: *Francis R. Anaya*



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Report Title:

Public Lands; Hilo Community Economic District; Lease Extension; Department of Land and Natural Resources; Board of Land and Natural Resources

Description:

Clarifies that the Board of Land and Natural Resources shall not unilaterally amend the terms and conditions of any lease of public lands being extended pursuant to Act 149, Session Laws of Hawaii 2018, except as otherwise provided therein; and if the Board of Land and Natural Resources wishes to amend the terms and conditions of any lease of public lands being extended to reflect the Board's most current lease form and leasing practices and policies, such lease form and leasing practices and policies must be included in the rules of the Board. Defines "lease of public lands". Repeals 6/30/2028.

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

