
A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 PART I

2 SECTION 1. The legislature finds that Act 149, Session
3 Laws of Hawaii 2018 (Act 149), established a ten-year pilot
4 project to authorize the board of land and natural resources to
5 extend leases of public lands in the Hilo community economic
6 district for the purpose of facilitating improvement and
7 economic opportunity in the area for lessees who commit to
8 making substantial improvements to the existing improvements or
9 constructing new substantial improvements.

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

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



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

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

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



1 granted under the measure to be executed using the most current
2 lease form and leasing practices and policies of the board of
3 land and natural resources.

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

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

18 Accordingly, the purpose of this part is to clarify that:

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



1 Act 149, codified at part X of chapter 171, Hawaii
2 Revised Statutes, except as otherwise provided
3 therein; and

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

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

16 "[+]§171-192[+] Lease restrictions. (a) The board, from
17 time to time, upon the issuance or during the term of any
18 intensive agricultural, aquaculture, commercial, mariculture,
19 special livestock, pasture, hotel, resort, or industrial lease
20 of public lands within the Hilo community economic district,
21 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~~[-]~~;

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; and

14 (C) Not be used as a reason or justification to delay
15 intaking, processing, considering, and approving
16 requests or applications for development
17 agreements and lease extensions pursuant to this
18 section and the department and board shall
19 continue to intake and process applications for
20 development agreements and lease extensions



1 pursuant to this section pending the promulgation
2 or approval of administrative rules.

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

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

16 (2) A taking of a portion of the area of the lease by
17 government action by eminent domain, withdrawal, or
18 conservation easement; provided that the portion taken
19 shall not be less than ten per cent of the entire
20 leased area unless otherwise approved by the board;
21 provided that the board determines that the lessee



1 will not be adequately compensated pursuant to the
2 lease provisions.

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

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

7 (2) The rental shall not be less than the rental for the
8 preceding term;

9 (3) The ~~[rules of]~~ most current lease form and leasing
10 practices and policies of the board~~[, setting forth~~
11 ~~any additional terms and conditions which shall~~
12 ~~ensure]~~; provided that the lease form and leasing
13 practices and policies shall:

14 (A) Ensure and promote the purposes of the demised
15 lands; and

16 (B) Be included in the rules of the board governing
17 the extension of leases of public lands pursuant
18 to this part or this chapter, adopted by the
19 board in accordance with chapter 91; and

20 (4) The length of the extension shall not exceed a
21 reasonable length of time for the purpose of providing



1 relief and shall in no case extend the original
2 lease's fixed rental period by more than forty years.

3 (f) The applicant for any lease extension pursuant to this
4 section shall pay all costs and expenses incurred by the
5 department in connection with the processing, analyzing, and
6 negotiating of any lease extension request and document and of
7 the development agreement under subsections (a) and (b).

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

11 (h) Nothing contained in this section shall diminish,
12 alter, or amend any existing rights, privileges, or practices of
13 the Native Hawaiian people.

14 (i) For the purposes of this section, "lease of public
15 lands" includes leases entered into through direct negotiation
16 without public auction and leases granted at public auction."

17 PART II

18 SECTION 3. The purpose of this part is to establish a
19 temporary public land trust working group to be placed within
20 the office of the governor for administrative purposes only.

21 The working group shall have the sole, special purpose of



1 compiling a definitive inventory of the lands that comprise the
 2 public land trust described in section 4, and referred to in
 3 section 6, of article XII of the Hawaii State Constitution. The
 4 legislature intends that this inventory and valuation will be
 5 the basis for future legislation to determine the income and
 6 proceeds from the pro rata portion of the public land trust
 7 under section 6 of article XII, of the Hawaii State Constitution
 8 for expenditure by the office of Hawaiian affairs for the
 9 betterment of the conditions of native Hawaiians.

10 SECTION 4. (a) There is established in the office of the
 11 governor for administrative purposes only a temporary public
 12 land trust working group that shall have the special purpose of
 13 compiling an inventory of all lands in the public land trust and
 14 then, once an inventory is completed, establishing a valuation
 15 of the lands in the inventory. The working group shall use its
 16 reasonable best efforts to complete the inventory within
 17 twenty-four months of the effective date of this part.

18 (b) The working group shall comprise six members, one of
 19 whom shall be appointed by the governor, one of whom shall be
 20 appointed by the speaker of the house of representatives, one of
 21 whom shall be appointed by the president of the senate, and



1 three of whom shall be appointed by the office of Hawaiian
2 affairs board of trustees.

3 (c) All state agencies shall identify and provide full
4 cooperation and access to information requested by the working
5 group regarding all lands under the agency's ownership or
6 control, whether the land is owned by the agency in fee or set
7 aside by executive order, to the extent required by the working
8 group to fulfill its purpose of identifying all lands in the
9 public land trust inventory.

10 (d) The office of Hawaiian affairs shall provide the
11 working group with a comprehensive list of all parcels of land
12 that the office of Hawaiian affairs believes:

13 (1) Are required to be included in the public land trust
14 inventory; and

15 (2) Constitute crown lands that should be included in the
16 public land trust inventory.

17 (e) The members of the working group shall appoint,
18 without regard to chapters 76 and 89, Hawaii Revised Statutes,
19 an executive director who shall serve at the pleasure of the
20 working group. The executive director shall oversee the
21 day-to-day operations of the working group and perform other



1 functions as directed by the working group, including procuring
2 any professional and other services necessary to complete the
3 inventory of the public land trust. The executive director's
4 salary shall be determined by the working group.

5 (f) The working group may employ, without regard to
6 chapters 76 and 89, Hawaii Revised Statutes, and at its pleasure
7 dismiss, other persons whom the working group deems necessary
8 for the performance of its functions. The working group may
9 establish the compensation of any persons employed pursuant to
10 this subsection.

11 (g) The working group shall submit an annual report on the
12 progress of its work to the legislature no later than twenty
13 days prior to the convening of each regular session. The
14 working group shall further submit interim progress reports to
15 the legislature, office of Hawaiian affairs, and governor by the
16 close of each fiscal quarter.

17 (h) The temporary public land trust working group shall
18 cease to exist on _____, 20__.

19 SECTION 5. There is appropriated out of the general
20 revenues of the State of Hawaii the sum of \$ _____ or so
21 much thereof as may be necessary for fiscal year 2023-2024 and



1 the same sum or so much thereof as may be necessary for fiscal
2 year 2024-2025 to carry out the purposes of this part, including
3 the hiring of necessary staff, purchasing of equipment, and
4 procurement of professional and other services.

5 The sums appropriated shall be expended by the office of
6 the governor for the purposes of this part.

7 PART III

8 SECTION 6. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$65,000,000 or so
10 much thereof as may be necessary for fiscal year 2023-2024 and
11 the same sum or so much thereof as may be necessary for fiscal
12 year 2024-2025 for repairs to bulkheads and revetments located
13 in the parcels conveyed to the office of Hawaiian affairs
14 pursuant to Act 15, Session Laws of Hawaii 2012.

15 The sums appropriated shall be expended by the office of
16 Hawaiian affairs for the purposes of this part.

17 PART IV

18 SECTION 7. (a) The office of Hawaiian affairs shall
19 prepare a programmatic environmental impact statement for any
20 office of Hawaiian affairs development projects within the
21 Kakaako community development district makai area.



1 (b) The office of Hawaiian affairs shall submit the
2 programmatic environmental impact statement to the office of
3 environmental quality control. Acceptance of a programmatic
4 environmental impact statement by the office of environmental
5 quality control shall be a condition precedent to the
6 implementation of any proposed development project by the office
7 of Hawaiian affairs within the Kakaako community development
8 district makai area.

9 (c) Once the programmatic environmental impact statement
10 has been accepted by the office of environmental quality
11 control, it shall satisfy the requirements of chapter 343,
12 Hawaii Revised Statutes, for any development project approved by
13 the office of Hawaiian affairs within the Kakaako community
14 development district makai area.

15 (d) The office of Hawaiian affairs shall adopt rules
16 pursuant to chapter 91, Hawaii Revised Statutes for the purposes
17 of this section.

18 (e) As used in this section, "environmental impact
19 statement" shall have the same meaning as in section 343-2,
20 Hawaii Revised Statutes.

1 SECTION 8. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$6,000,000 or so much
3 thereof as may be necessary for fiscal year 2023-2024 to prepare
4 a programmatic environmental impact statement for any
5 development projects within the Kakaako community development
6 district makai area.

7 The sum appropriated shall be expended by the office of
8 Hawaiian affairs for the purposes of this part.

9 PART V

10 SECTION 9. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$13,000,000 or so
12 much thereof as may be necessary for fiscal year 2023-2024 for
13 architectural and engineering design, water supply, and other
14 construction costs for the development of Kukaniloko.

15 The sum appropriated shall be expended by the office of
16 Hawaiian affairs for the purposes of this part.

17 PART VI

18 SECTION 10. This Act does not affect rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 were begun before its effective date.



1 SECTION 11. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 12. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 13. This Act shall take effect on July 1, 2050;
10 provided that the appropriations made in sections 5, 6, 8, and 9
11 of this Act shall take effect on July 1, 2050.



Report Title:

Public Lands; Hilo Community Economic District; Lease Extension; Department of Land and Natural Resources; BLNR; OHA; Temporary Public Land Trust Working Group; Office of the Governor; Public Land Trust Inventory; Appropriations

Description:

Part I: 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". Part II: Establishes a temporary public land trust working group within the Office of the Governor for administrative purposes only. Provides that the working group's sole purpose shall be to compile a definitive inventory of public land trust lands. Authorizes the working group to hire staff. Part III: Appropriates moneys to the Office of Hawaiian Affairs to be used for making repairs to bulkheads and revetments located in certain parcels conveyed to the Office. PART IV: Requires and appropriates moneys for the Office of Hawaiian Affairs to conduct a programmatic environmental impact statement for any development projects within the Kakaako Makai area of the public land trust. Part V: Appropriates moneys to the Office of Hawaiian Affairs for certain construction costs for the development of Kukaniloko. Effective 7/1/2050. (SD2)

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