

JAN 18 2024

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 the economic well-being of Hawaii's people.
5 As the majority landowner in east Hawaii, the State has an
6 enormous influence on the vision, economic development, and
7 overall success of the east Hawaii community.

8 The legislature further finds that, under existing laws,
9 many public land lessees face uncertain futures following the
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. As an incentive for lessees to
8 make continuous improvements to the lands, negotiations should
9 favor 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, improvements
16 have not been made and infrastructure has deteriorated, leaving
17 the region underutilized and in disrepair. The legislature
18 further finds that Hilo has the potential for increased growth
19 that can improve workforce and affordable housing, parks and
20 open space, public facilities, and commercial, industrial, and
21 hotel facilities, and a pilot project in this area has the



1 potential to revive public lands, resulting in more tax revenue
2 and community revitalization, and be assessed to determine
3 whether it can be replicated in other areas of the State.

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

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

11 "[+]§171-192[+] Lease restrictions. (a) The [board,]
12 department, from time to time, upon the issuance or during the
13 term of any intensive agricultural, aquaculture, commercial,
14 mariculture, special livestock, pasture, hotel, resort, or
15 industrial lease of public lands within the Hilo community
16 economic district, may[+]

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

19 ~~(2) Extend or modify the fixed rental period or the term~~
20 ~~of the lease upon approval by the board of a~~
21 ~~development agreement proposed by the lessee to make~~



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

15 (b) [~~Prior to~~] Before entering into a development
16 agreement, the lessee or the lessee and developer shall submit
17 to the [~~board~~] department the plans and specifications for the
18 total development being proposed. The [~~board~~] department shall
19 review the plans and specifications [~~and, in determining whether~~
20 ~~to approve the development agreement pursuant to subsection~~
21 ~~(a)(2), consider:] to confirm:~~



- 1 (1) Whether the development proposed in the development
2 agreement is of sufficient worth and value to justify
3 the extension of the lease;
- 4 (2) The estimated period of time to complete the
5 improvements and expected date of completion of the
6 improvements; and
- 7 (3) The minimum revised annual rent based on the [~~fair~~
8 ~~market value~~] current tax assessed value of the lands
9 to be developed, as determined by an appraiser for the
10 board, and the percentage of rent where gross receipts
11 exceed a specified amount.
- 12 (c) An application for an extension of the fixed rental
13 period or term of the lease shall be made to the department
14 within one hundred eighty days, which shall offer the lease fee
15 amount based on the [~~economic life of the substantial~~
16 ~~improvements as determined by the board or an independent~~
17 ~~appraiser,~~] current tax assessed value of the leased premises
18 and without the need for board approval; provided that the
19 approval of any extension shall be subject to the following:



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



1 expenditures within a time period specified by the
2 [~~board,~~] department, otherwise the lease extension
3 shall be canceled; and

4 (8) The rules of the [~~board,~~] department, setting forth
5 any additional terms and conditions [~~, which~~] that
6 shall ensure and promote the purposes of the demised
7 lands.

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

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



1 (2) A taking of a portion of the area of the lease by
2 government action by eminent domain, withdrawal, or
3 conservation easement; provided that the portion taken
4 shall not be less than ten per cent of the entire
5 leased area unless otherwise approved by the [~~board,~~]
6 department; provided that the [~~board~~] department
7 determines that the lessee will not be adequately
8 compensated pursuant to the lease provisions.

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

11 (1) The demised premises has been used substantially for
12 the purposes [~~for which~~] that they were originally
13 leased;

14 (2) The rental shall not be less than the rental for the
15 preceding term;

16 (3) The rules of the [~~board,~~] department, setting forth
17 any additional terms and conditions [~~which~~] that shall
18 ensure and promote the purposes of the demised lands;
19 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 SECTION 3. Section 171-193, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~§~~171-193~~]~~ Lessees within the last ten years of their
11 lease terms; request for interest. (a) Notwithstanding any
12 other provision of law to the contrary, and except as otherwise
13 provided in section 171-192, a lessee of public land within the
14 Hilo community economic district that is classified as hotel,
15 resort, or commercial and industrial use pursuant to section
16 171-10, and that is subject to the management, administration,
17 or control of the [~~board~~] department may, during the last ten
18 years of the term of the original lease, submit a written
19 request to the [~~board~~] department to initiate a request for
20 interest process as provided in this section.



1 (b) Within one hundred eighty days of a lessee's written
2 request to initiate a request for interest, the [~~board~~]
3 department shall:

4 (1) Appraise the [~~value of the land and any improvements~~
5 ~~to the land~~] current tax assessed value that existed
6 as of the date of the written request pursuant to
7 section 171-17(a) [~~and require the awardee of a new~~
8 ~~lease executed pursuant to this section to reimburse~~
9 ~~the department for the appraisal~~]; and

10 (2) Publish a request for interest and request for
11 qualifications notice inviting persons to express
12 their interest in leasing the land and their
13 qualifications as potential lessees and describing any
14 improvements to the land that exist as of the date of
15 the written request. The notice shall be given at
16 least once statewide and at least once in the county
17 where the land is located and shall contain:

18 (A) The qualifications required of eligible lessees
19 ~~[which]~~ that shall conform to department policy
20 for new leases;



- 1 (B) A general description of the land, including the
2 address and tax map key, the termination date of
3 the existing lease, and [~~of any improvements to~~
4 ~~the land~~] the current tax assessed value that
5 existed as of the date of the written request;
- 6 (C) That the land to be leased is classified as
7 hotel, resort, or commercial and industrial use
8 pursuant to section 171-10;
- 9 (D) The [~~appraised value~~] current tax assessed value
10 of the land [~~and of any improvements to the land~~]
11 that existed as of the date of the written
12 request;
- 13 (E) The closing date and manner by which a person
14 shall indicate interest and submit a statement of
15 qualifications; and
- 16 (F) Notice that a current business plan is a
17 prerequisite to participate at time of auction or
18 direct negotiation, if applicable, and shall be
19 made a term of the lease.
- 20 (c) Within ninety days after the closing date specified in
21 the notice, the [~~board~~] department shall determine if any



1 persons have qualified under the terms of the request for
2 qualifications and shall notify all persons who expressed
3 interest as to whether they qualified. Qualified bidders shall
4 be required to deposit an amount equal to one per cent of the
5 current tax assessed value of the leasehold improvements [~~as~~
6 ~~determined by appraisal~~], but not less than \$1,000, to be held
7 in an interest bearing account as deposit by the department and
8 returned to the applicant at the applicant's cancellation of
9 interest, the applicant's unsuccessful bid at auction, or as a
10 credit against the applicant's successful bid at auction. The
11 [~~board~~] department shall also notify the current lessee as to
12 whether any other persons qualified.

13 (d) The [~~board~~] department shall proceed to dispose of the
14 land in accordance with section 171-41.6."

15 SECTION 4. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17



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

2

INTRODUCED BY: *Francis X. Amodeo*



S.B. NO. 2153

Report Title:

BLNR; DLNR; 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. Requires all applications to the Department of Land and Natural Resources for an extension of fixed rental periods or lease terms to be made within 180 days and confirm lease extensions.

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