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# 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 the 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 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 clarify the oversight that  
5 the board of land natural resources has over lease extensions  
6 and to require the board of land and natural resources to  
7 utilize the current taxed assessed value for lease extensions  
8 and require all applications to the Board of Land and Natural  
9 Resources for an extension of fixed rental periods or lease  
10 terms to be made within one hundred eighty days.

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 or eliminate]~~ Eliminate any of the  
20 restrictions 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          financing.

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 agreement  
2 pursuant to subsection (a)(2), 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 board within  
16 one hundred eighty days, which shall offer the lease fee amount  
17 based on the [~~economic life of the substantial improvements as~~  
18 ~~determined by the board or an independent appraiser;~~] current  
19 tax assessed value of the leased premises and without the need  
20 for board approval; provided that the approval of any extension  
21 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, otherwise the lease extension shall be  
3 canceled; and

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

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

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

20 (2) A taking of a portion of the area of the lease by  
21 government action by eminent domain, withdrawal, or



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

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

- 9 (1) The demised premises has been used substantially for  
10 the purposes [~~for which~~] that they were originally  
11 leased;
- 12 (2) The rental shall not be less than the rental for the  
13 preceding term;
- 14 (3) The rules of the board, setting forth any additional  
15 terms and conditions [~~which~~] that shall ensure and  
16 promote the purposes of the demised lands; and
- 17 (4) The length of the extension shall not exceed a  
18 reasonable length of time for the purpose of providing  
19 relief and shall in no case extend the original  
20 lease's fixed rental period by more than forty years.





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

6 SECTION 3. Section 171-193, Hawaii Revised Statutes, is  
 7 amended subsections (b) and (c) to read as follows:

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

10 (1) Appraise the [~~value of the land and any improvements~~  
 11 ~~to the land~~] current tax assessed value that existed  
 12 as of the date of the written request pursuant to  
 13 section 171-17(a) [~~and require the awardee of a new~~  
 14 ~~lease executed pursuant to this section to reimburse~~  
 15 ~~the department for the appraisal~~]; and

16 (2) Publish a request for interest and request for  
 17 qualifications notice inviting persons to express  
 18 their interest in leasing the land and their  
 19 qualifications as potential lessees and describing any  
 20 improvements to the land that exist as of the date of  
 21 the written request. The notice shall be given at



- 1 least once statewide and at least once in the county  
2 where the land is located and shall contain:
- 3 (A) The qualifications required of eligible lessees  
4 ~~[which]~~ that shall conform to ~~[department]~~ board  
5 policy for new leases;
- 6 (B) A general description of the land, including the  
7 address and tax map key, the termination date of  
8 the existing lease, and ~~[of any improvements to~~  
9 ~~the land]~~ the current tax assessed value that  
10 existed as of the date of the written request;
- 11 (C) That the land to be leased is classified as  
12 hotel, resort, or commercial and industrial use  
13 pursuant to section 171-10;
- 14 (D) The ~~[appraised value]~~ current tax assessed value  
15 of the land ~~[and of any improvements to the land]~~  
16 that existed as of the date of the written  
17 request;
- 18 (E) The closing date and manner by which a person  
19 shall indicate interest and submit a statement of  
20 qualifications; and



1 (F) Notice that a current business plan is a  
2 prerequisite to participate at time of auction or  
3 direct negotiation, if applicable, and shall be  
4 made a term of the lease.

5 (c) Within ninety days after the closing date specified in  
6 the notice, the board shall determine if any persons have  
7 qualified under the terms of the request for qualifications and  
8 shall notify all persons who expressed interest as to whether  
9 they qualified. Qualified bidders shall be required to deposit  
10 an amount equal to one per cent of the current tax assessed  
11 value of the leasehold improvements [~~as determined by~~  
12 ~~appraisal~~], but not less than \$1,000, to be held in an interest  
13 bearing account as deposit by the [~~department~~] board and  
14 returned to the applicant at the applicant's cancellation of  
15 interest, the applicant's unsuccessful bid at auction, or as a  
16 credit against the applicant's successful bid at auction. The  
17 board shall also notify the current lessee as to whether any  
18 other persons qualified."

19 SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21 SECTION 5. This Act shall take effect on July 1, 2050.



**Report Title:**

BLNR; Lease Extensions; Hilo Community Economic District

**Description:**

Requires the Board of Land and Natural Resources to utilize the current taxed assessed value for lease extensions. Requires all applications to the Board 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. Takes effect 7/1/2050. (SD1)

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

