
A BILL FOR AN ACT

RELATING TO UPDATING PUBLIC LAND LEASES ISSUED PURSUANT TO
CHAPTER 171, HAWAII REVISED STATUTES.

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

1 SECTION 1. An audit conducted by the state auditor at the
2 direction of the legislature made critical findings regarding
3 the special land and development fund within the department of
4 land and natural resources. The auditor's findings and
5 recommendations were contained in Audit Report No. 19-12.

6 Subsequently, a house investigative committee (committee) was
7 established on April 29, 2021, to review the audit.

8 The purpose of this Act is to require that lease extensions
9 approved by the board of land and natural resources update the
10 lease terms and conditions to reflect the most current standard
11 lease form terms and conditions and ensure that in the event of
12 a conflict or inconsistency between an updated lease term or
13 condition authorized under chapter 171, Hawaii Revised Statutes,
14 and a term or condition of the lease being extended, the updated
15 lease term or condition authorized under chapter 171, Hawaii
16 Revised Statutes, shall control. This Act is intended to

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1 address recommendations made by the committee to require, upon
2 approval of an extension of a lease, an update to the terms and
3 conditions of a lease, upon its extension, to reflect the most
4 current lease form. This Act is intended to apply to all leases
5 issued under chapter 171, Hawaii Revised Statutes, regardless of
6 whether they were issued by public auction or direct
7 negotiation. The legislature finds that the Hawaii Supreme
8 Court's decision in *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384
9 P.2d 581 (1963), *aff'd on reh'g*, 47 Haw. 466, 390 P.2d 737,
10 prohibited reforming leases in a way that would be inconsistent
11 with the terms of the notice of sale, but that case does not
12 apply to the terms and conditions in an extended lease. This
13 Act makes clear that extended lease terms must be drafted using
14 current, board-approved terms and conditions.

15 SECTION 2. Section 171-36, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§171-36 Lease restrictions; generally.** (a) Except as
18 otherwise provided, the following restrictions shall apply to
19 all leases:

20 (1) Options for renewal of terms are prohibited;

21 (2) No lease shall be for a longer term than sixty-five
22 years, except in the case of a residential leasehold,

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1 which may provide for an initial term of fifty-five
2 years with the privilege of extension to meet the
3 requirements of the Federal Housing Administration,
4 Federal National Mortgage Association, Federal Land
5 Bank of Berkeley, Federal Intermediate Credit Bank of
6 Berkeley, Berkeley Bank for Cooperatives, or
7 Department of Veterans Affairs requirements; provided
8 that the aggregate of the initial term and extension
9 shall in no event exceed seventy-five years;

10 (3) No lease shall be made for any land under a lease that
11 has more than two years to run;

12 (4) No lease shall be made to any person who is in arrears
13 in the payment of taxes, rents, or other obligations
14 owed to the State or any county;

15 (5) No lease shall be transferable or assignable, except
16 by devise, bequest, or intestate succession; provided
17 that with the approval of the board, the assignment
18 and transfer of a lease or unit thereof may be made in
19 accordance with current industry standards, as
20 determined by the board; provided further that prior
21 to the approval of any assignment of lease, the board

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1 shall have the right to review and approve the
2 consideration to be paid by the assignee and may
3 condition its consent to the assignment of the lease
4 on payment by the lessee of a premium based on the
5 amount by which the consideration for the assignment,
6 whether by cash, credit, or otherwise, exceeds the
7 depreciated cost of improvements and trade fixtures
8 being transferred to the assignee; provided further
9 that with respect to state agricultural leases, in the
10 event of foreclosure or sale, the premium, if any,
11 shall be assessed only after the encumbrances of
12 record and any other advances made by the holder of a
13 security interest are paid;

- 14 (6) The lessee shall not sublet the whole or any part of
15 the demised premises, except with the approval of the
16 board; provided that prior to the approval, the board
17 shall have the right to review and approve the rent to
18 be charged to the sublessee; provided further that in
19 the case where the lessee is required to pay rent
20 based on a percentage of its gross receipts, the
21 receipts of the sublessee shall be included as part of

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1 the lessee's gross receipts; provided further that the
2 board shall have the right to review and, if
3 necessary, revise the rent of the demised premises
4 based upon the rental rate charged to the sublessee,
5 including the percentage rent, if applicable, and
6 provided that the rent may not be revised downward;

7 (7) The lease shall be for a specific use or uses and
8 shall not include waste lands, unless it is
9 impractical to provide otherwise;

10 (8) Mineral and metallic rights and surface and ground
11 water shall be reserved to the State; and

12 (9) No lease of public lands, including submerged lands,
13 or any extension of any lease of public lands shall be
14 issued by the State to any person to construct, use,
15 or maintain a sunbathing or swimming pier or to use
16 the lands for those purposes, unless the lease, or any
17 extension thereof, contains provisions permitting the
18 general public to use the pier facilities on the
19 public lands and requiring that a sign or signs be
20 placed on the pier, clearly visible to the public,
21 that indicates the public's right to the use of the

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1 pier. The board, at the earliest practicable date,
2 and where legally possible, shall cause all existing
3 leases to be amended to conform to this paragraph.

4 The term "lease", for the purposes of this paragraph,
5 includes month-to-month rental agreements and similar
6 tenancies.

7 (b) The board, from time to time, upon the issuance or
8 during the term of any intensive agricultural, aquaculture,
9 commercial, mariculture, special livestock, pasture, or
10 industrial lease, may:

11 (1) Modify or eliminate any of the restrictions specified
12 in subsection (a);

13 (2) Extend or modify the fixed rental period of the lease;
14 provided that the aggregate of the initial term and
15 any extension granted shall not exceed sixty-five
16 years; or

17 (3) Extend the term of the lease,
18 to the extent necessary to qualify the lease for mortgage
19 lending or guaranty purposes with any federal mortgage lending
20 agency, to qualify the lessee for any state or private lending
21 institution loan, private loan guaranteed by the State, or any

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1 loan in which the State and any private lender participates, or
2 to amortize the cost of substantial improvements to the demised
3 premises that are paid for by the lessee without institutional
4 financing.

5 (c) Any extension authorized pursuant to subsection (b)
6 shall be based on the economic life of the improvements as
7 determined by the board or an independent appraiser; provided
8 that the approval of any extension shall be subject to the
9 following:

- 10 (1) The demised premises have been used substantially for
11 the purpose for which they were originally leased;
- 12 (2) The aggregate of the initial term and any extension
13 granted shall not be for more than sixty-five years;
- 14 (3) In the event of a reopening, the rental for any
15 ensuing period shall be the fair market rental at the
16 time of reopening;
- 17 (4) Any federal or private lending institution shall be
18 qualified to do business in the State;
- 19 (5) Proceeds of any mortgage or loan shall be used solely
20 for the operations or improvements on the demised
21 premises; and

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(6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board or else the lease extension shall be canceled~~[, and~~

~~(7) The rules of the board setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands].~~

(d) The board, at any time during the term of any intensive agricultural, aquaculture, or mariculture lease and when justified by sound economic practices or other circumstances, may permit an alternative agricultural, aquaculture, or mariculture use or uses for any portion or portions of the land demised. As a condition to permitting alternative uses, the board may require any other modifications, including rental adjustments or changes in the lease, as may be necessary to effect or accommodate the alternative use or uses. An alternative use or uses may be allowed by the board upon:

- (1) The application of the lessee;
- (2) Consent of each holder of record having a security interest in the leasehold; and
- (3) A finding by the board that the alternative use or uses are in the public interest.

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(e) The board, from time to time during the term of any agriculture, intensive agriculture, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may modify or eliminate any of the restrictions specified in subsection (a), extend or modify the fixed rental period of the lease, or extend the term of the lease upon a showing of significant economic hardship directly caused by:

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

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

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

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

(2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;

(3) The rental shall not be less than the rental for the preceding term;

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

~~[(5)]~~ (4) The length of the extension shall not exceed a reasonable length of time for the purpose of providing relief and shall in no case exceed five years.

(g) Any lease extended pursuant to this section shall be drafted on the most current approved lease form, and may include the imposition of a removal bond, to ensure that the extension of any lease pursuant to this section, as with the issuance of a new lease, will be subject to the most current leasing practices and policies of the board, which shall be incorporated into the lease document prior to its execution.

(h) In the event the extension of a lease results in a conflict or inconsistency between an updated lease term or condition authorized under this chapter and an existing lease

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1 term or condition, the updated lease term or condition
2 authorized under this chapter shall control."

3 SECTION 3. Section 171-36.5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~f~~] §171-36.5 [~~f~~] Commercial, industrial, resort, mixed-
6 use, or government leases; extension of term. (a)

7 Notwithstanding section 171-36, for leases that have not been
8 assigned or transferred within ten years prior to receipt of an
9 application for a lease extension submitted pursuant to this
10 section, the board may extend the rental period of a lease of
11 public lands for commercial use, industrial use, resort use,
12 mixed-use, or government use upon the board's approval of a
13 development agreement proposed by the lessee or by the lessee
14 and developer to make substantial improvements to the existing
15 improvements. For the purposes of this subsection, "assigned or
16 transferred" shall not include:

17 (1) A sale or change in ownership of a lessee that is a
18 company or entity; or

19 (2) A collateral assignment of lease or other security
20 granted to a leasehold mortgagee in connection with
21 leasehold financing by a lessee.

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1 (b) Before entering into a development agreement, the
2 lessee or the lessee and developer shall submit to the board the
3 plans and specifications for the total development proposed.
4 The board shall review the plans and specifications and
5 determine:

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

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

12 (3) The minimum revised annual rent based on the fair
13 market value of the [~~lands to be developed,~~] land and
14 existing improvements, as determined by an appraiser
15 for the board and, if deemed appropriate by an
16 appraiser, the appropriate percentage of rent where
17 gross receipts exceed a specified amount.

18 No lease extension shall be approved until the board and
19 the lessee or the lessee and developer mutually agree to the
20 terms and conditions of the development agreement.

21 (c) No construction shall commence until the lessee or the

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1 lessee and developer have filed with the board a sufficient bond
2 conditioned upon the full and faithful performance of all the
3 terms and conditions of the development agreement.

4 (d) Any extension of a lease pursuant to this section
5 shall be based upon the substantial improvements to be made and
6 shall be for a period no longer than forty years. No lease
7 shall be transferable or assignable throughout the first ten
8 years of the extended term, except by devise, bequest, intestate
9 succession, a collateral assignment of lease or other security
10 granted to a leasehold mortgagee in connection with leasehold
11 financing by a lessee, a change in direct ownership of less than
12 fifty per cent of a lessee that is a company or entity, a change
13 in indirect ownership of a lessee that is a company or entity,
14 or by operation of law. The prohibition on assignments and
15 transfer of leases shall include a prohibition on conveyances of
16 leases. During subsequent periods of the extended term of the
17 lease, the lease may be assigned or transferred, subject to
18 approval by the board.

19 (e) The applicant for a lease extension shall pay all
20 costs and expenses incurred by the department in connection with
21 processing, analyzing, or negotiating any lease extension

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1 request, lease document, or development agreement under this
2 section.

3 (f) Any lease extended pursuant to this section shall be
4 drafted on the most current approved lease form, and may include
5 the imposition of a removal bond, to ensure that the extension
6 of any lease pursuant to this section, as with the issuance of a
7 new lease, will be subject to the most current leasing practices
8 and policies of the board, which shall be incorporated into the
9 lease document prior to its execution.

10 ~~[(f)]~~ (g) As used in this section:

11 "Government use" means a development undertaken under a
12 lease held by any agency or department of the State or its
13 political subdivisions other than the University of Hawaii or
14 any department, agency, or administratively attached entity of
15 the University of Hawaii system.

16 "Mixed-use" means a development that combines two or more
17 of the following uses in a single project: commercial use,
18 resort use, multifamily residential use, or government use.

19 "Resort use" means a development that:

20 (1) Provides transient accommodations as defined in
21 section 237D-1 and related services, which may include
22 a front desk, housekeeping, food and beverage, room

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1 service, and other services customarily associated
2 with transient accommodations; and

3 (2) Where at least seventy-five per cent of the living or
4 sleeping quarters are used solely for transient
5 accommodations for the term of any lease extension.

6 "Substantial improvements" means any renovation,
7 rehabilitation, reconstruction, or construction of existing
8 improvements, including minimum requirements for off-site and
9 on-site improvements, the cost of which equals or exceeds thirty
10 per cent of the market value of the existing improvements, that
11 the lessee or the lessee and developer installs, constructs, and
12 completes by the date of completion of the total development.

13 (h) In the event the extension of a lease results in a
14 conflict or inconsistency between an updated lease term or
15 condition authorized under this chapter and an existing lease
16 term or condition, the updated lease term or condition
17 authorized under this chapter shall control."

18 SECTION 4. Section 171-192, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§171-192[+] Lease restrictions. (a) The board, from
21 time to time, upon the issuance or during the term of any
22 intensive agricultural, aquaculture, commercial, mariculture,

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1 special livestock, pasture, hotel, resort, or industrial lease
2 of public lands within the Hilo community economic district,
3 may:

4 (1) Modify or eliminate any of the restrictions specified
5 in section 171-36(a);

6 (2) Extend or modify the fixed rental period or the term
7 of the lease upon approval by the board of a
8 development agreement proposed by the lessee to make
9 substantial improvements to the existing improvements
10 or to construct new substantial improvements so long
11 as the length of any extension granted does not extend
12 the original lease term by more than forty years; or

13 (3) Extend the term and modify any provisions of the
14 lease,

15 to the extent necessary to qualify the lease for mortgage
16 lending or guaranty purposes with any federal mortgage lending
17 agency; to qualify the lessee for any state or private lending
18 institution loan, private loan guaranteed by the State, or any
19 loan in which the State and any private lender participates; or
20 to amortize the cost of substantial improvements to the demised
21 premises that are paid for by the lessee without institutional
22 financing.

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1 (b) Prior to entering into a development agreement, the
2 lessee or the lessee and developer shall submit to the board the
3 plans and specifications for the total development being
4 proposed. The board shall review the plans and specifications
5 and, in determining whether to approve the development agreement
6 pursuant to subsection (a)(2), consider:

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

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

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

18 (c) An extension of the fixed rental period or term of the
19 lease shall be based on the economic life of the substantial
20 improvements as determined by the board or an independent
21 appraiser; provided that the approval of any extension shall be
22 subject to the following:

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- 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; and
- 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
21 board, otherwise the lease extension shall be
22 canceled[~~—and~~

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

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

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

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

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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 the board, setting forth any additional~~
10 ~~terms and conditions which shall ensure and promote~~
11 ~~the purposes of the demised lands,] and~~

12 ~~[(4)]~~ (3) 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).

21 (g) Any lease extended pursuant to this section shall be
22 drafted on the most current approved lease form, and may include

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1 the imposition of a removal bond, to ensure that the extension
2 of any lease pursuant to this section, as with the issuance of a
3 new lease, will be subject to the most current leasing practices
4 and policies of the board, which shall be incorporated into the
5 lease document prior to its execution.

6 (h) In the event the extension of a lease results in a
7 conflict or inconsistency between an updated lease term or
8 condition authorized under this chapter and an existing lease
9 term or condition, the updated lease term or condition
10 authorized under this chapter shall control."

11 SECTION 5. This Act does not affect rights and duties that
12 matured or leases or extensions of leases that are fully
13 executed before its effective date.

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval.

17
18 INTRODUCED BY:



19 BY REQUEST

JAN 21 2025

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Report Title:

Land and Natural Resources; Public Land; Lease Terms and Conditions; Lease Extensions

Description:

Requires that lease extensions approved by the Board of Land and Natural Resources be drafted on forms that reflect contemporary leasing practices and policies of the Board, and which shall control over conflicting or inconsistent provisions in the lease being extended.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO UPDATING
PUBLIC LAND LEASES ISSUED PURSUANT TO
CHAPTER 171, HAWAII REVISED STATUTES.

PURPOSE: To require that lease extensions approved by
the Board of Land and Natural Resources
(Board) update the terms and conditions of
leases using the most current lease form at
the time the extension is approved and to
ensure that in the event of a conflict or
inconsistency between an updated lease term
or condition authorized under chapter 171,
Hawaii Revised Statutes (HRS), and a term or
condition in the lease being extended, then
the updated lease term or condition
authorized under chapter 171, HRS, shall
control and to repeal existing wording in
sections 171-36(c) and 171-192(c), HRS,
providing that lease extensions shall be
subject to the rules of the Board, because
the Board has no rules on lease extensions
and the Department has no need to adopt
rules because the statutory requirements for
a lease extension are sufficiently detailed.

MEANS: Amend sections 171-36, 171-36.5, and 171-
192, HRS.

JUSTIFICATION: An audit conducted by the State Auditor at
the direction of the Legislature made
critical findings regarding the Special Land
and Development Fund within the Department.
The Auditor's findings and recommendations
were contained in Audit Report No. 19-12.
Subsequently, a House Investigative
Committee (Committee) was established on
April 29, 2021.

The Committee made several recommendations
to provide clear legislative intent and
authority to assist the Department in
carrying out its statutory functions. This
bill is the result of the Committee's

recommended legislation to allow the Board to update the terms and conditions of the lease using the most current lease form and ensure that, in the event the extension of a lease results in a conflict or inconsistency between an updated lease term or condition authorized under chapter 171, HRS, and a term or condition in the lease being extended, the updated lease term or condition authorized under chapter 171, HRS, shall control.

The proposed bill is intended to apply to all leases issued under chapter 171, HRS, regardless of whether they were issued by public auction or direct negotiation. The Hawaii Supreme Court's decision in *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384 P.2d 581 (1963), *aff'd on reh'g*, 47 Haw. 466, 390 P.2d 737, does not apply to extended leases. This Act makes clear that extended leases must be drafted using current, Board-approved terms and conditions.

The issues that were identified in the audit and report are of significance to the State, as the inability to update lease terms and conditions not only deprives the public of a fair return for the use of public lands, but also could lead to additional liability against the State and significant public health and safety issues such as when structures beyond their useful life are left on public lands at the end of a lease. In this regard, the bill expressly authorizes the imposition of a removal bond to ensure the removal of outdated improvements from the lease premises at lease expiration or earlier termination.

Adding a new section 171-36(g), HRS, will make the most current Board lease form apply to "any lease," thus, all state leases - including those lease types in sections 171-36(b)-(f), 171-36.5, and 171-192, HRS, will be affected.

Impact on the public: This bill will help to alleviate health and safety concerns as it mandates that the terms and conditions of a lease extension be subject to the most current leasing practice and policies of the Board, thus ensuring that the structures thereon are properly managed and maintained. Additionally, the State could impose a condition in a lease extension to require lessees to remove structures that have outlived their useful lives from the premises at the lessees' expense, thereby avoiding situations where the State is left with dilapidated improvements at the end of the lease that are costly to demolish (e.g., Uncle Billy's Hotel in Hilo).

Impact on the department and other agencies: Increase departmental revenue and mitigate against future liability and public health and safety issues by allowing the Board to update lease terms and conditions upon extension of the lease.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LNR 101.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.