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# 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. The  
8 legislature notes that the committee recommended to require,  
9 upon approval of a lease extension, an update to the terms and  
10 conditions of a lease to reflect the most current lease form.  
11 The legislature finds that the Hawaii Supreme Court's decision  
12 in *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384 P.2d 581 (1963),  
13 prohibited reforming leases in a way that would be inconsistent  
14 with the terms of the notice of sale, but that case does not  
15 apply to the terms and conditions in an extended lease.



1 Accordingly, the purpose of this Act is to require lease  
2 extensions approved by the board of land and natural resources  
3 to be drafted on the most current approved lease form, be  
4 subject to the most current leasing practices and policies of  
5 the board, and in the event of a conflict or inconsistency  
6 between an updated lease term or condition authorized under  
7 chapter 171, Hawaii Revised Statutes, and a term or condition of  
8 the lease being extended, the updated lease term or condition  
9 authorized under chapter 171, Hawaii Revised Statutes, shall  
10 control. This Act is intended to apply to all leases issued  
11 under chapter 171, Hawaii Revised Statutes, regardless of  
12 whether they were issued by public auction or direct  
13 negotiation.

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

16 **"§171-36 Lease restrictions; generally.** (a) Except as  
17 otherwise provided, the following restrictions shall apply to  
18 all leases:

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

20 (2) No lease shall be for a longer term than sixty-five

21 years, except in the case of a residential leasehold,



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~~] before the approval of any assignment of lease,



1 the board shall have the right to review and approve  
2 the 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~~] before the approval,  
17 the board shall have the right to review and approve  
18 the rent to be charged to the sublessee; provided  
19 further that in the case where the lessee is required  
20 to pay rent based on a percentage of its gross  
21 receipts, the receipts of the sublessee shall be



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

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

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

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



1           that indicates the public's right to the use of the  
2           pier. The board, at the earliest practicable date,  
3           and where legally possible, shall cause all existing  
4           leases to be amended to conform to this paragraph.

5           ~~[The term "lease", for]~~ For the purposes of this  
6           paragraph, "lease" includes month-to-month rental  
7           agreements and similar tenancies.

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

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

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

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



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

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

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

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

15 (3) In the event of a reopening, the rental for any  
16 ensuing period shall be the fair market rental at the  
17 time of reopening;

18 (4) Any federal or private lending institution shall be  
19 qualified to do business in the State;



1 (5) Proceeds of any mortgage or loan shall be used solely  
2 for the operations or improvements on the demised  
3 premises; and

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

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

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

21 (1) The application of the lessee;





1 (2) Consent of each holder of record having a security  
2 interest in the leasehold; and

3 (3) A finding by the board that the alternative use or  
4 uses are in the public interest.

5 (e) The board, from time to time during the term of any  
6 agriculture, intensive agriculture, aquaculture, commercial,  
7 mariculture, special livestock, pasture, or industrial lease,  
8 may modify or eliminate any of the restrictions specified in  
9 subsection (a), extend or modify the fixed rental period of the  
10 lease, or extend the term of the lease upon a showing of  
11 significant economic hardship directly 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 [~~and~~] provided further that the board determines that



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

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

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

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

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

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

14 ~~+(5)]~~ (4) The length of the extension shall not exceed a  
15 reasonable length of time for the purpose of providing  
16 relief and shall in no case exceed five years.

17 (g) Any lease extended pursuant to this section:

18 (1) Shall be drafted on the most current approved lease  
19 form to ensure that the extension of any lease  
20 pursuant to this section, as with the issuance of a



1 new lease, will be subject to the most current leasing  
2 practices and policies of the board;

3 (2) May include the imposition of a removal bond to ensure  
4 the removal of outdated improvements from the leased  
5 premises at expiration or earlier termination of the  
6 lease; and

7 (3) Shall have incorporated into the lease document the  
8 most current leasing practices and policies of the  
9 board before execution of the lease extension.

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

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

17 "[+]§171-36.5[+] **Commercial, industrial, resort, mixed-**  
18 **use, or government leases; extension of term.** (a)

19 Notwithstanding section 171-36, for leases that have not been  
20 assigned or transferred within ten years [~~prior to~~] before  
21 receipt of an application for a lease extension submitted



1 pursuant to this section, the board may extend the rental period  
2 of a lease of public lands for commercial use, industrial use,  
3 resort use, mixed-use, or government use upon the board's  
4 approval of a development agreement proposed by the lessee or by  
5 the lessee and developer to make substantial improvements to the  
6 existing improvements. For the purposes of this subsection,  
7 "assigned or transferred" shall not include:

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

10 (2) A collateral assignment of lease or other security  
11 granted to a leasehold mortgagee in connection with  
12 leasehold financing by a lessee.

13 (b) Before entering into a development agreement, the  
14 lessee or the lessee and developer shall submit to the board the  
15 plans and specifications for the total development proposed.

16 The board shall review the plans and specifications and  
17 determine:

18 (1) Whether the development proposed in the development  
19 agreement is of sufficient worth and value to justify  
20 the extension of the lease;



1           (2) The estimated period of time necessary to complete the  
2           improvements and expected date of completion of the  
3           improvements; and

4           (3) The minimum revised annual rent based on the fair  
5           market value of the [~~lands to be developed,~~] land and  
6           existing improvements, as determined by an appraiser  
7           for the board and, if deemed appropriate by an  
8           appraiser, the appropriate percentage of rent where  
9           gross receipts exceed a specified amount.

10          No lease extension shall be approved until the board and  
11          the lessee or the lessee and developer mutually agree to the  
12          terms and conditions of the development agreement.

13          (c) No construction shall commence until the lessee or the  
14          lessee and developer have filed with the board a sufficient bond  
15          conditioned upon the full and faithful performance of all the  
16          terms and conditions of the development agreement.

17          (d) Any extension of a lease pursuant to this section  
18          shall be based upon the substantial improvements to be made and  
19          shall be for a period no longer than forty years. No lease  
20          shall be transferable or assignable throughout the first ten  
21          years of the extended term, except by devise, bequest, intestate



1 succession, a collateral assignment of lease or other security  
2 granted to a leasehold mortgagee in connection with leasehold  
3 financing by a lessee, a change in direct ownership of less than  
4 fifty per cent of a lessee that is a company or entity, a change  
5 in indirect ownership of a lessee that is a company or entity,  
6 or by operation of law. The prohibition on assignments and  
7 transfer of leases shall include a prohibition on conveyances of  
8 leases. During subsequent periods of the extended term of the  
9 lease, the lease may be assigned or transferred, subject to  
10 approval by the board.

11 (e) The applicant for a lease extension shall pay all  
12 costs and expenses incurred by the department in connection with  
13 processing, analyzing, or negotiating any lease extension  
14 request, lease document, or development agreement under this  
15 section.

16 (f) Any lease extended pursuant to this section:

17 (1) Shall be drafted on the most current approved lease  
18 form to ensure that the extension of any lease  
19 pursuant to this section, as with the issuance of a  
20 new lease, will be subject to the most current leasing  
21 practices and policies of the board;



1        (2) May include the imposition of a removal bond to ensure  
2                the removal of outdated improvements from the leased  
3                premises at expiration or earlier termination of the  
4                lease; and

5        (3) Shall have incorporated into the lease document the  
6                most current leasing practices and policies of the  
7                board prior to execution of the lease extension.

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

13       ~~[(f)]~~ (h) [As used in] For the purposes of this section:

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

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



1 "Resort use" means a development that:

2 (1) Provides transient accommodations as defined in  
3 section 237D-1 and related services, which may include  
4 a front desk, housekeeping, food and beverage, room  
5 service, and other services customarily associated  
6 with transient accommodations; and

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

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

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

19 "[~~§~~§171-192~~§~~] **Lease restrictions.** (a) The board, from  
20 time to time, upon the issuance or during the term of any  
21 intensive agricultural, aquaculture, commercial, mariculture,





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



1 premises that are paid for by the lessee without institutional  
2 financing.

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

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

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

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

20 (c) An extension of the fixed rental period or term of the  
21 lease shall be based on the economic life of the substantial



1 improvements as determined by the board or an independent  
2 appraiser; provided that the approval of any extension shall be  
3 subject to the following:

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

6 (2) The length of any extension granted for the fixed  
7 rental period of the lease shall not extend the fixed  
8 rental period of the original lease by more than forty  
9 years;

10 (3) The length of any extension granted for the term of  
11 the lease shall not extend the original lease term by  
12 more than forty years;

13 (4) If a reopening occurs, the rental for any ensuing  
14 period shall be the fair market rental as determined  
15 under section 171-17(d) at the time of reopening;

16 (5) Any federal or private lending institution shall be  
17 qualified to do business in the State;

18 (6) Proceeds of any mortgage or loan shall be used solely  
19 for the operations or substantial improvements on the  
20 demised premises; and



(7) Where substantial improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board, otherwise the lease extension shall be canceled[; and

~~(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



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           provided further that the board determines that the  
7           lessee will not be adequately compensated pursuant to  
8           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 they were originally leased;

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

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

18          ~~[(4)]~~ (3) The length of the extension shall not exceed a  
19          reasonable length of time for the purpose of providing  
20          relief and shall in no case extend the original  
21          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 in connection with the processing, analyzing, and  
4 negotiating of any lease extension request and document and of  
5 the development agreement under subsections (a) and (b).

6 (g) Any lease extended pursuant to this section:

7 (1) Shall be drafted on the most current approved lease  
8 form to ensure that the extension of any lease  
9 pursuant to this section, as with the issuance of a  
10 new lease, will be subject to the most current leasing  
11 practices and policies of the board;

12 (2) May include the imposition of a removal bond to ensure  
13 the removal of outdated improvements from the leased  
14 premises at expiration or earlier termination of the  
15 lease; and

16 (3) Shall have incorporated into the lease document the  
17 most current leasing practices and policies of the  
18 board prior to execution of the lease extension.

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



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

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

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

8 SECTION 7. This Act shall take effect on July 1, 2040.



**Report Title:**

BLNR; 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. Takes effect 7/1/2040. (SD2)

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