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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. Chapter 171, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§171-    Designation of improvement districts. (a) The  
5 board may petition the county to create, define, and establish  
6 an improvement district according to applicable assessment  
7 statutes or ordinances, for any betterment or improvement  
8 proposed by the department as provided in section 46-78.

9           (b) The department shall develop an improvement district  
10 plan. The plan shall include but not be limited to district  
11 development guidance policies, district-wide improvement  
12 programs and district improvement rules.

13           (c) The planning activities of the department shall be  
14 coordinated with county plans. Consideration shall be given to  
15 county general plans, development plans, and ordinances.

16           (d) Prior to submitting a petition to the county, the  
17 department shall hold a public hearing on the proposed  
18 improvement district plan pursuant to chapter 91 and, after



1 consideration of comments received and appropriate revision,  
2 shall submit the improvement district plan to the governor for  
3 the governor's approval.

4 After approval, the governor shall submit to the  
5 legislature requests for appropriations or authorization to  
6 issue bonds, or both, to implement the improvement district  
7 plan. The governor shall submit the requests to the legislature  
8 as part of the executive budget or supplemental budget, as  
9 appropriate.

10 (e) The department may amend the improvement district plan  
11 as may be necessary. Amendments shall be made in accordance  
12 with chapter 91.

13 (f) Upon legislative approval of appropriations or  
14 authorization to issue bonds, the department may petition the  
15 county to establish the improvement district."

16 SECTION 2. Section 46-78, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[~~f~~]**S46-78**[~~]~~ **Improvement districts, initiation by the**  
19 **State.** Notwithstanding any provision of law to the contrary,  
20 the respective legislative bodies of the counties may, upon the  
21 petition of the state department of transportation[~~r~~] or state  
22 department of land and natural resources, create, define and



1 establish improvement districts according to applicable  
2 assessment statutes or ordinances, for any betterment or  
3 improvement proposed by the state department of  
4 transportation[-] or state department of land and natural  
5 resources. The petition of the department of transportation or  
6 department of land and natural resources shall include the  
7 necessary surveys, maps, plans and other data for the betterment  
8 or improvement. Upon approval of the petition by the  
9 legislative body of the county, the county shall proceed in the  
10 same manner as though the plan for the proposed construction or  
11 improvement had been initiated by the legislative body of the  
12 county on its own motion, provided that the county may abandon  
13 the proceedings prior to adoption of the resolution creating the  
14 improvement district.

15 The provisions of the assessment statutes or ordinances  
16 shall be applicable to the proposed construction or improvement  
17 insofar as practicable, provided that the costs thereof shall be  
18 assessed against the land specially benefited either on a  
19 frontage basis, according to area of the land within the  
20 improvement district, or on the basis of assessed valuation for  
21 real property tax purposes, or any combination thereof.



1       The state department of transportation or state department  
2 of land and natural resources shall assume, except for the cost  
3 to be borne by the board of water supply of the county, the cost  
4 of construction or improvement which would have been assumed by  
5 the county had the project been initiated by the county,  
6 including the costs and incidentals necessary to process the  
7 project, and the costs allocable to state land and land exempted  
8 by the improvement district statutes from the payment of  
9 improvement assessments; provided that where lands owned by the  
10 county, including the board of water supply of the county, form  
11 part of the improvement district, the county or the board of  
12 water supply of the county, whichever is applicable, shall pay  
13 the costs allocable to such lands. Nothing contained herein  
14 however, shall be construed to prohibit any county from  
15 participating in the costs of an improvement district which is  
16 initiated upon petition by the department of transportation[-]  
17 or department of land and natural resources.

18       Upon filing the petition for the creation of an improvement  
19 district, the department of transportation or department of land  
20 and natural resources shall deposit with the county an amount  
21 adequate to cover the administrative costs of the county. In  
22 addition, the department of transportation or department of land



1 and natural resources shall from time to time upon request of  
2 the county deposit the necessary sums to cover the costs of  
3 acquiring land required for the project. Upon award of any  
4 contract, either for the entire project or separately for the  
5 different kinds of work to be performed, the department of  
6 transportation or department of land and natural resources shall  
7 deposit with the county the amount the State is obliged to pay  
8 towards the contract price; provided that if the completion of  
9 the contract will extend beyond the fiscal year in which the  
10 contract is executed, the department of transportation or  
11 department of land and natural resources may deposit with the  
12 county, if the contract is to be completed during the next  
13 succeeding fiscal year, at least fifty per cent or, if the  
14 contract by its terms will not be completed until beyond the  
15 next succeeding fiscal year, at least thirty-three and one third  
16 per cent of the amount the State is obliged to pay toward the  
17 contract price."

18 SECTION 3. Section 171-36, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§171-36 Lease restrictions; generally.** (a) Except as  
21 otherwise provided by law, the following restrictions shall  
22 apply to all leases:



- 1 (1) Options for renewal of terms are prohibited;
- 2 (2) No lease shall be for a longer term than sixty-five  
3 years, except in the case of a residential leasehold  
4 which may provide for an initial term of fifty-five  
5 years with the privilege of extension to meet the  
6 requirements of the Federal Housing Administration,  
7 Federal National Mortgage Association, Federal Land  
8 Bank of Berkeley, Federal Intermediate Credit Bank of  
9 Berkeley, Berkeley Bank for Cooperatives, or Veterans  
10 Administration; provided that the aggregate of the  
11 initial term and extension shall in no event exceed  
12 seventy-five years;
- 13 (3) No lease shall be made for any land under a lease  
14 which has more than two years to run;
- 15 (4) No lease shall be made to any person who is in arrears  
16 in the payment of taxes, rents, or other obligations  
17 owing the State or any county;
- 18 (5) No lease shall be transferable or assignable, except  
19 by devise, bequest, or intestate succession; provided  
20 that with the approval of the board of land and  
21 natural resources, the assignment and transfer of a  
22 lease or unit thereof may be made in accordance with



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

17 (6) The lessee shall not sublet the whole or any part of  
18 the demised premises except with the approval of the  
19 board; provided that:

20 (A) Prior to the approval, the board shall have the  
21 right to review and approve the rent to be  
22 charged to the sublessee;



1 (B) In the case where the lessee is required to pay  
2 rent based on a percentage of its gross receipts,  
3 the receipts of the sublessee shall be included  
4 as part of the lessee's gross receipts;

5 (C) The board shall have the right to review and, if  
6 necessary, revise the rent of the demised  
7 premises based upon the rental rate charged to  
8 the sublessee including the percentage rent, if  
9 applicable, and provided that the rent may not be  
10 revised downward; and

11 (D) The board may waive the requirement to obtain  
12 approval for good cause;

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

16 (8) Mineral and metallic rights and surface and ground  
17 water shall be reserved to the State.

18 (b) The board, from time to time, upon the issuance or  
19 during the term of any intensive agricultural, aquaculture,  
20 commercial, mariculture, special livestock, pasture, or  
21 industrial lease, may[+]



1       ~~(1)~~ ~~Modify~~] modify or eliminate any of the restrictions  
2                   specified in subsection (a);

3       ~~(2)~~ ~~Extend~~] extend or modify the fixed rental period of  
4                   the lease; or

5       ~~(3)~~ ~~Extend~~] extend the term of the lease;

6 to the extent necessary to qualify the lease for mortgage  
7 lending or guaranty purposes with any federal mortgage lending  
8 agency, to qualify the lessee for any state or private lending  
9 institution loan, private loan guaranteed by the State, or any  
10 loan in which the State and any private lender participates, or  
11 to amortize the cost of substantial improvements to the demised  
12 premises that are paid for by the lessee without institutional  
13 financing, such extension being based on the economic life of  
14 the improvements as determined by the board or an independent  
15 appraiser; provided that the approval of any extension shall be  
16 subject to the following:

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

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



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

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

6 (5) Proceeds of any mortgage or loan shall be used solely  
7 for the operations or improvements on the demised  
8 premises;

9 (6) Where improvements are financed by the lessee, the  
10 lessee shall submit receipts of expenditures within a  
11 time period specified by the board, otherwise the  
12 lease extension shall be canceled; and

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

16 (c) The board at any time during the term of any intensive  
17 agricultural, aquaculture, or mariculture lease and when  
18 justified by sound economic practices or other circumstances,  
19 may permit an alternative agricultural, aquaculture, or  
20 mariculture use or uses for any portion or portions of the land  
21 demised. As a condition to permitting alternative uses, the  
22 board may require such other modifications, including rental



1 adjustments or changes in the lease as may be necessary to  
2 effect or accommodate the alternative use or uses. An  
3 alternative use or uses may be allowed by the board upon:

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

9 (d) The board, from time to time, during the term of any  
10 agriculture, intensive agriculture, aquaculture, commercial,  
11 mariculture, special livestock, pasture, or industrial lease,  
12 may modify or eliminate any of the [†]restrictions[†] specified  
13 in subsection (a), extend or modify the fixed rental period of  
14 the lease, or extend the term of the lease upon a showing of  
15 significant economic hardship directly 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  
22 conservation easement; provided that the portion taken



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

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

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

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

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

14 (4) The rules of the board, setting forth any additional  
15 terms and conditions which shall ensure and promote  
16 the purposes of the demised lands; and

17 (5) 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 exceed five years. "

20 (f) From time to time, upon the issuance or during the  
21 term of any commercial or industrial lease, when the lessee  
22 demonstrates a willingness to make improvements to the



1 facilities under the lease and agrees to any assessments imposed  
2 as part of an improvement district pursuant to section 46-78,  
3 the board may:

4 (1) Modify or eliminate any of the restrictions specified  
5 in subsection (a);

6 (2) Extend or modify the fixed rental period of the lease;  
7 or

8 (3) Extend the term of the lease.

9 (g) Any extension or modification of a lease under this

10 section shall be subject to the following:

11 (1) Any extension granted shall be for a period not longer  
12 than \_\_\_\_\_ per cent of the term of the original lease,  
13 based on the cost of improvements proposed by the  
14 lessee and any assessments imposed as part of an  
15 improvement district; and

16 (2) The rental shall be the fair market rent and a  
17 percentage rent where gross receipts exceed a certain  
18 level.

19 (h) The board may deny any extension or modification when  
20 it determines that the amount of investment in improvements to  
21 the facilities do not justify an extension or modification."



1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

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

4

INTRODUCED BY: *James R. Thompson*



**Report Title:**

Public Lands

**Description:**

Authorizes the board of land and natural resources to designate an improvement district when it determines that there is a need for replanning, renewal, or redevelopment of an area's infrastructure.

