

JAN 23 2009

A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1 SECTION 1. The legislature finds that small businesses are
2 an essential element in strengthening and diversifying Hawaii's
3 economy and creating jobs for our citizens. More than ninety-
4 five per cent of all Hawaii establishments are small businesses,
5 and they provide jobs for sixty per cent of all Hawaii
6 employees.

7 The legislature further finds that despite their
8 contribution to Hawaii's economy, small businesses are at a
9 disadvantage in terms of land ownership. The commercial and
10 industrial properties that exist within the State's urban
11 districts are primarily owned by a few landowners. These
12 landowners control large tracts of land and retain their
13 ownership by means of leases to small businesses, which in turn
14 supply services and products to the communities within or
15 adjacent to the commercial and industrial properties. Without
16 these neighborhood businesses, consumers would be compelled to
17 travel long distances and expend large amounts of time and
18 effort to locate these needed services and products.



1 In the city and county of Honolulu's "Annual Report on the
2 Status of Land Use on Oahu, Fiscal Year 2006" (February 2008),
3 growth projections show a decided shift away from the primary
4 urban center for industrial jobs. Approximately eighty per cent
5 of industrial jobs were located in the primary urban center in
6 2000, and by 2030 that projection drops to seventy-one per cent.
7 For that same period, industrial jobs in the Ewa region will
8 nearly double, from seven to thirteen per cent, and increase by
9 nearly fifty per cent, from seven to ten per cent in central
10 Oahu.

11 The legislature further finds that small businesses are
12 often dependent on commercial and industrial leases, which may
13 contain provisions that are so onerous as to force these
14 businesses to relocate to rural areas and away from the urban
15 centers. In practical terms, consumers will find that the auto
16 service center in Mapunapuna, or the small retailer in Kakaako,
17 is no longer in business near where the consumer lives or works.

18 The legislature finds that the proximity of small
19 businesses to urban communities serves to stabilize Hawaii's
20 economy, especially during the recessionary period that the
21 United States has entered. Thus, maintaining close geographic



1 ties between small businesses and the communities they serve is
2 a public purpose that requires legislative support.

3 The purpose of this Act is to stabilize Hawaii's economy by
4 addressing some of the burdensome provisions of existing
5 commercial and industrial leases of certain lands within urban
6 districts by clarifying provisions in long-term commercial and
7 industrial ground leases, without substantial reduction in the
8 economic benefit to the owners or impact on their ownership of
9 the land, without impairing their lease contracts, and without
10 the taking of any property rights without due process of law.

11 SECTION 2. Chapter 519, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§519- Leases of commercial and industrial property.

15 (a) Notwithstanding any other law to the contrary and unless
16 expressly stated to the contrary in the lease, any lease of
17 commercial or industrial leasehold property shall be subject to
18 the following terms and conditions:

19 (1) Whenever a lease condition requires that a lessee
20 obtain the approval of the lessor for the assignment,
21 transfer, or encumbrance of the leasehold property,



1 the approval of the lessor may not be unreasonably
2 withheld;

3 (2) Whenever a lessee is required by a lease with less
4 than twenty years remaining on its term to make major
5 and substantial improvements to any structures on the
6 leasehold property or to any infrastructure supporting
7 the leasehold property, that provision shall be
8 construed to require only reasonable maintenance and
9 repair work to satisfy federal, state, and county
10 laws, ordinances, and code requirements to ensure the
11 public's health, safety, and welfare, and not to
12 require the lessee to make substantial new
13 improvements to infrastructure or structures;

14 (3) Whenever a lease existing on July 1, 2009, or entered
15 into thereafter, provides for the renegotiation of
16 rent during the term of the lease and the renegotiated
17 rent is based, according to the terms of the lease, on
18 fair and reasonable annual rent as of the commencement
19 of the term, that provision shall:

20 (A) Be construed to require that the rent shall be
21 fair and reasonable to both the lessor and the
22 lessee to the lease; and



1 (B) Take into account the uses and intensity of use
2 approved by the lessor, and the surface and
3 subsurface characteristics of the site and the
4 neighborhood on the renegotiation date,
5 and provided further, that unless as otherwise
6 specified in the lease, if the lessee has subtenants
7 with subleases that provide for recovery by the lessee
8 of ground lease rent, those subtenants shall be
9 charged their pro-rata share of the fair and
10 reasonable annual rent as renegotiated pursuant to
11 this paragraph.

12 (b) For purposes of this section:

13 "Commercial or industrial leasehold property" means any
14 ground lease of real property:

- 15 (1) Situated in the State;
16 (2) Zoned by a county for commercial or industrial use;
17 (3) That is subject to a lease with a term of ten years or
18 more and an unexpired term of five years or more; and
19 (4) Where the lessor is the owner, directly or indirectly,
20 of fifty thousand square feet or more of industrial
21 and commercial property in the State.



1 "Lease" means a conveyance leasing privately owned land by
2 a fee simple owner as lessor, or by a lessee as sublessor, to
3 any person, for a term exceeding ten years in consideration of a
4 return of rent or other remuneration."

5 SECTION 3. This Act applies to any lease in effect on its
6 effective date, but does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun, before its effective date.

9 SECTION 4. New statutory material is underscored.

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

11
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Report Title:

Leasehold; Commercial and Industrial Property

Description:

Clarifies provisions contained in long-term commercial and industrial ground leases.

