



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 6, 2018

GOV. MSG. NO. 1250

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 6, 2018, the following bill was signed into law:

SB3058 SD2 HD2 CD1

RELATING TO PUBLIC LANDS
ACT 149 (18)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

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 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
10 expiration of their leases. The legislature further finds that
11 these lessees have little incentive to make major investments in
12 infrastructural improvements or to ensure the long-term
13 maintenance of facilities on the land. As a result, the
14 infrastructure and facilities on public lands in East Hawaii
15 have been deteriorating in many locations.

16 The legislature also finds that the Banyan Drive area on
17 the Waiakea Peninsula in East Hawaii, Wailoa State Park, Wailoa
18 Estuary, and the commercial leases in the Kanoelehua Industrial



1 Area are currently facing this difficult economic challenge.
2 Due to the uncertainty regarding continued tenancy, despite East
3 Hawaii being the center of tourism for the island of Hawaii,
4 improvements have not been made and infrastructure has
5 deteriorated, leaving the region underutilized and in disrepair.
6 The legislature further finds that Hilo has the potential for
7 increased growth that can improve workforce and affordable
8 housing, parks and open space, public facilities, and
9 commercial, industrial, and hotel facilities, and a pilot
10 project in this area has the potential to revive public lands,
11 resulting in more tax revenue and community revitalization, and
12 be assessed to determine whether it can be replicated in other
13 areas of the State.

14 The purpose of this Act is to establish a ten-year pilot
15 project to authorize the board of land and natural resources to
16 extend leases of public land in an area to be known as the Hilo
17 community economic district to facilitate efficient and
18 effective improvement, and economic opportunity, in the area for
19 lessees who commit to making substantial improvements to the



1 existing improvements or constructing new substantial
2 improvements.

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

6 "PART . HILO COMMUNITY ECONOMIC DISTRICT

7 §171-A Definitions. As used in this part:

8 "Hilo community economic district" means the area beginning
9 at the intersection of Manono Street and Kamehameha Avenue,
10 extending south to Piilani Street, east from Piilani Street to
11 Kalanikoa Street to include Hoolulu Park, and west from the
12 intersection of Manono Street and Piilani Street to tax map key
13 3-2-2-031-001, inclusive along the coastline to Maile Street
14 until its intersection with Kilauea Avenue and then to Aupuni
15 Street and beyond to include the following tax map keys until
16 intersection with Ponahawai Street: 3-2-2-013-003, 3-2-2-012-
17 001, 3-2-2-012-016, 3-2-2-011-01, and 3-2-2-007-018; extending
18 makai to tax map key 3-2-3-002-016, along the coastline and
19 including tax map key 3-2-2-001-006 until intersection with
20 Lihiwai Street; those lands bounded or abutting Lihiwai Street,



1 inclusive through Banyan Drive until its intersection with
2 Kamehameha Avenue; from Kamehameha Avenue at its intersection
3 with Kalaniana'ole Avenue and extending east on Kalaniana'ole
4 Avenue to include those abutting lands until tax map key 3-2-1-
5 010-033 on the mauka side of the road and tax map key 3-2-1-01-
6 1010 on the makai side of Kalaniana'ole Avenue, to include also
7 any of those lands on Ocean View Drive makai of Kalaniana'ole
8 Avenue and the lands mauka on Silva Street and Keaa Street; the
9 lands within the Hilo airport area managed by the department of
10 land and natural resources as identified on tax map key 3-2-1-
11 12; and the lands abutting or bounded by Kano'eleh'ua Avenue
12 extending south to Makaala Street, then east on Makaala Street
13 to Railroad Avenue then north on Railroad Avenue until Leilani
14 Street and east on Leilani Street until tax map key 3-2-2-037-
15 144, then west on Leilani Street until its intersection with
16 Kano'eleh'ua Avenue; and all those lands abutting or bounded by
17 Pohaku Street, Kukila Street, Halekau'ila Street, and Lanika'ula
18 Street as identified on tax map key 3-2-2-58; on Kano'eleh'ua
19 Avenue heading north from Makaala Street those lands mauka
20 including those lands on Makaala Street, Holumua Street, Pookela



1 Street, Wiwoole Street, and Kawili Street as identified on tax
2 map key 3-2-2-049 and 3-2-2-050; then on Kanoelehua Avenue North
3 from Kawili Street and Kalanikoa Street from Piilani Street
4 until they intersect with Kamehameha Avenue.

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

12 **§171-B Lease restrictions.** (a) The board, from time to
13 time, upon the issuance or during the term of any intensive
14 agricultural, aquaculture, commercial, mariculture, special
15 livestock, pasture, hotel, resort, or industrial lease of public
16 lands within the Hilo community economic district, may:

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

19 (2) Extend or modify the fixed rental period or the term
20 of the lease upon approval by the board of a



1 development agreement proposed by the lessee to make
2 substantial improvements to the existing improvements
3 or to construct new substantial improvements so long
4 as the length of any extension granted does not extend
5 the original lease term by more than forty years; or

6 (3) Extend the term and modify any provisions of the
7 lease,

8 to the extent necessary to qualify the lease for mortgage
9 lending or guaranty purposes with any federal mortgage lending
10 agency; to qualify the lessee for any state or private lending
11 institution loan, private loan guaranteed by the State, or any
12 loan in which the State and any private lender participates; or
13 to amortize the cost of substantial improvements to the demised
14 premises that are paid for by the lessee without institutional
15 financing.

16 (b) Prior to entering into a development agreement, the
17 lessee or the lessee and developer shall submit to the board the
18 plans and specifications for the total development being
19 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 of the lands to be developed, as
11 determined by an appraiser for the board, and the
12 percentage of rent where gross receipts exceed a
13 specified amount.

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

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



- 1 (2) The length of any extension granted for the fixed
2 rental period of the lease shall not extend the fixed
3 rental period of the original lease by more than forty
4 years;
- 5 (3) The length of any extension granted for the term of
6 the lease shall not extend the original lease term by
7 more than forty years;
- 8 (4) If a reopening occurs, the rental for any ensuing
9 period shall be the fair market rental as determined
10 under section 171-17(d) at the time of reopening;
- 11 (5) Any federal or private lending institution shall be
12 qualified to do business in the State;
- 13 (6) Proceeds of any mortgage or loan shall be used solely
14 for the operations or substantial improvements on the
15 demised premises;
- 16 (7) Where substantial improvements are financed by the
17 lessee, the lessee shall submit receipts of
18 expenditures within a time period specified by the
19 board, otherwise the lease extension shall be
20 canceled; and



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

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

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

17 (2) A taking of a portion of the area of the lease by
18 government action by eminent domain, withdrawal, or
19 conservation easement; provided that the portion taken
20 shall not be less than ten per cent of the entire



1 leased area unless otherwise approved by the board;
2 provided that the board determines that the lessee
3 will not be adequately compensated pursuant to the
4 lease provisions.

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

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

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

11 (3) 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 (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 extend the original
17 lease's fixed rental period by more than forty years.

18 (f) The applicant for any lease extension pursuant to this
19 section shall pay all costs and expenses incurred by the
20 department in connection with the processing, analyzing, and



1 negotiating of any lease extension request and document and of
2 the development agreement under subsections (a) and (b).

3 §171-C Lessees within the last ten years of their lease
4 terms; request for interest. (a) Notwithstanding any other
5 provision of law to the contrary, and except as otherwise
6 provided in section 171-B, a lessee of public land within the
7 Hilo community economic district that is classified as hotel,
8 resort, or commercial and industrial use pursuant to section
9 171-10, and that is subject to the management, administration,
10 or control of the board may, during the last ten years of the
11 term of the original lease, submit a written request to the
12 board to initiate a request for interest process as provided in
13 this section.

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

16 (1) Appraise the value of the land and any improvements to
17 the land that existed as of the date of the written
18 request pursuant to section 171-17(a) and require the
19 awardee of a new lease executed pursuant to this



1 section to reimburse the department for the appraisal;
2 and

3 (2) Publish a request for interest and request for
4 qualifications notice inviting persons to express
5 their interest in leasing the land and their
6 qualifications as potential lessees and describing any
7 improvements to the land that exist as of the date of
8 the written request. The notice shall be given at
9 least once statewide and at least once in the county
10 where the land is located and shall contain:

11 (A) The qualifications required of eligible lessees
12 which shall conform to department policy for new
13 leases;

14 (B) A general description of the land, including the
15 address and tax map key, the termination date of
16 the existing lease, and of any improvements to
17 the land that existed as of the date of the
18 written request;



1 (C) That the land to be leased is classified as
2 hotel, resort, or commercial and industrial use
3 pursuant to section 171-10;

4 (D) The appraised value of the land and of any
5 improvements to the land that existed as of the
6 date of the written request;

7 (E) The closing date and manner by which a person
8 shall indicate interest and submit a statement of
9 qualifications; and

10 (F) Notice that a current business plan is a
11 prerequisite to participate at time of auction or
12 direct negotiation, if applicable, and shall be
13 made a term of the lease.

14 (c) Within ninety days after the closing date specified in
15 the notice, the board shall determine if any persons have
16 qualified under the terms of the request for qualifications and
17 shall notify all persons who expressed interest as to whether
18 they qualified. Qualified bidders shall be required to deposit
19 an amount equal to one per cent of the value of the leasehold
20 improvements as determined by appraisal, but not less than



1 \$1,000, to be held in an interest bearing account as deposit by
2 the department and returned to the applicant at the applicant's
3 cancellation of interest, the applicant's unsuccessful bid at
4 auction, or as a credit against the applicant's successful bid
5 at auction. The board shall also notify the current lessee as
6 to whether any other persons qualified.

7 (d) The board shall proceed to dispose of the land in
8 accordance with section 171-41.6."

9 SECTION 3. Section 171-41.6, Hawaii Revised Statutes, is
10 amended by amending its title and subsection (a) to read as
11 follows:

12 "[~~§~~171-41.6~~}] Lessees within the last ten years of
13 their lease terms; requests for interest. (a) Notwithstanding
14 any other provision of law to the contrary, and except as
15 otherwise provided in [~~section~~] sections 171-36(b) and (d) [~~7~~]
16 and 171-C, a lessee of public land that is classified as
17 commercial and industrial use pursuant to section 171-10, and
18 that is subject to the management, administration, or control of
19 the board may, during the last ten years of the term of the
20 original lease, submit a written request to the board to~~



1 initiate a request for interest process as provided in this
2 section."

3 SECTION 4. The department of land and natural resources
4 shall review the pilot project established by this Act and
5 submit a report of its findings and recommendations, including
6 any proposed legislation, to the legislature no later than
7 twenty days prior to the convening of the regular session of
8 2019 and every year thereafter.

9 SECTION 5. In codifying the new sections added by section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

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

15 SECTION 7. This Act shall take effect on July 1, 2018, and
16 shall be repealed on June 30, 2028; provided that section
17 171-41.6, Hawaii Revised Statutes, shall be reenacted in the
18 form in which it read on June 30, 2018.

APPROVED this 06 day of JUL, 2018

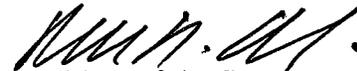


GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI‘I

Date: May 1, 2018
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-ninth Legislature of the State of Hawai‘i, Regular Session of 2018.


President of the Senate


Clerk of the Senate

SB No. 3058, SD 2, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives