

JAN 18 2018

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# A BILL FOR AN ACT

RELATING TO PROPRIETARY INTEREST PROTECTION AGREEMENTS.

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

1       SECTION 1. The legislature finds that municipalities and  
2 states have used proprietary interest protection agreements to  
3 protect the public's interest in public contracts and leases  
4 that are offered to private entities. Proprietary interest  
5 protection agreements, also known as labor peace agreements, are  
6 used to avoid future labor disputes where the public has a  
7 financial stake in the private activity. A proprietary interest  
8 protection agreement typically consists of an agreement between  
9 management and labor to not take economic action against each  
10 other, such as management disallowing union drives or workers  
11 picketing or striking.

12       The legislature further finds that the State enters into  
13 agreements with private businesses and individuals to lease  
14 numerous land parcels across the State. As a result of leasing  
15 the land, the State has a financial and proprietary interest in  
16 any business activities that occur on the land. A labor dispute  
17 with one of the lessees could result in interrupted services and



1 threaten the business's financial health and viability, which  
2 could in turn affect the lessee's ability to remit rent to the  
3 State. While the terms of the land lease place certain  
4 conditions on lessees, none protect against a labor-related  
5 disruption in a lessee's business activity.

6 The purpose of this Act is to require lessees of public  
7 land to enter into proprietary interest protection agreements  
8 when requested.

9 SECTION 2. Section 171-36, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) Except as otherwise provided, the following  
12 restrictions shall apply to all leases:

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

14 (2) No lease shall be for a longer term than sixty-five  
15 years, except in the case of a residential leasehold  
16 which may provide for an initial term of fifty-five  
17 years with the privilege of extension to meet the  
18 requirements of the Federal Housing Administration,  
19 Federal National Mortgage Association, Federal Land  
20 Bank of Berkeley, Federal Intermediate Credit Bank of  
21 Berkeley, Berkeley Bank for Cooperatives, or



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Department of Veterans Affairs requirements; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;

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

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

(5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash,



1 credit, or otherwise, exceeds the depreciated cost of  
2 improvements and trade fixtures being transferred to  
3 the assignee; provided further that with respect to  
4 state agricultural leases, in the event of foreclosure  
5 or sale, the premium, if any, shall be assessed only  
6 after the encumbrances of record and any other  
7 advances made by the holder of a security interest are  
8 paid;

9 (6) The lessee shall not sublet the whole or any part of  
10 the demised premises except with the approval of the  
11 board; provided that prior to the approval, the board  
12 shall have the right to review and approve the rent to  
13 be charged to the sublessee; provided further that in  
14 the case where the lessee is required to pay rent  
15 based on a percentage of its gross receipts, the  
16 receipts of the sublessee shall be included as part of  
17 the lessee's gross receipts; provided further that the  
18 board shall have the right to review and, if  
19 necessary, revise the rent of the demised premises  
20 based upon the rental rate charged to the sublessee



1 including the percentage rent, if applicable, and  
2 provided that the rent may not be revised downward;

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

6 (8) Mineral and metallic rights and surface and ground  
7 water shall be reserved to the State; [and]

8 (9) No lease of public lands, including submerged lands,  
9 nor any extension of any such lease, shall be issued  
10 by the State to any person to construct, use, or  
11 maintain a sunbathing or swimming pier or to use the  
12 lands for such purposes, unless such lease, or any  
13 extension thereof, contains provisions permitting the  
14 general public to use the pier facilities on the  
15 public lands and requiring that a sign or signs be  
16 placed on the pier, clearly visible to the public,  
17 which indicates the public's right to the use of the  
18 pier. The board, at the earliest practicable date,  
19 and where legally possible, shall cause all existing  
20 leases to be amended to conform to this paragraph.

21 The term "lease", for the purposes of this paragraph,



1 includes month-to-month rental agreements and similar  
2 tenancies[-]; and

3 (10) The lease shall obligate the lessee to enter into a  
4 proprietary interest protection agreement with any  
5 labor organization that actively seeks to represent  
6 the lessee's employees assigned to work at the leased  
7 premises. For the purposes of this paragraph,  
8 "proprietary interest protection agreement" means a  
9 written enforceable agreement that complies with the  
10 requirements of the National Labor Relations Act and  
11 contains provisions requiring, at a minimum, the  
12 lessee to maintain a neutral posture with respect to  
13 efforts by the labor organization to represent the  
14 lessee's employees, the parties to adhere to a card  
15 check procedure, and the labor organization and its  
16 members to refrain from engaging in picketing, work  
17 stoppages, boycotts, or other economic interference  
18 with the lessee's operation."

19 SECTION 3. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 begun before its effective date.



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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 on August 1, 2018.

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INTRODUCED BY:

Karl Albrecht

~~SC Keith Ogden~~



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**Report Title:**

Proprietary Interest Protection Agreements; Public Land Lease;  
Labor Relations

**Description:**

Requires public land leases to obligate a lessee to enter into a proprietary interest protection agreement with any labor organization representing the lessee's employees.

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