

JAN 18 2023

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. In 2021, twelve applications for
11 lease extensions have been submitted. However, only one such
12 extension has been finalized. Lessees are further constrained
13 by the lengthy process to achieve approval from the board of
14 land and natural resources to conduct small maintenance projects
15 or major renovations. Despite improvements made by lessees, the
16 board of land and natural resources continually issues new
17 terms, making guidelines for lease improvements ambiguous. As a



1 result, the infrastructure and facilities on public lands in
2 East Hawaii have been deteriorating in many locations.

3 Additionally, lessees also face difficulties in
4 renegotiating leases with the board of land and natural
5 resources. The lessees work tirelessly to improve and
6 revitalize the Kanoelehua industrial area for the benefit of
7 neighbors and the State alike. As an incentive for lessees to
8 make continuous improvements to the lands, negotiations should
9 favor lessees by utilizing current tax assessed values to ease
10 difficulties in the negotiation process.

11 The legislature also finds that the Banyan drive area on
12 the Waiakea peninsula in east Hawaii, Wailoa state park, Wailoa
13 estuary, and the commercial leases in the Kanoelehua industrial
14 area are currently facing this difficult economic challenge.
15 Due to the uncertainty regarding continued tenancy, improvements
16 have not been made and infrastructure has deteriorated, leaving
17 the region underutilized and in disrepair. The legislature
18 further finds that Hilo has the potential for increased growth
19 that can improve workforce and affordable housing, parks and
20 open space, public facilities, and commercial, industrial, and
21 hotel facilities, and a pilot project in this area has the



1 potential to revive public lands, resulting in more tax revenue
 2 and community revitalization, and be assessed to determine
 3 whether it can be replicated in other areas of the State.

4 The purpose of this Act is to repeal requirements for
 5 lessees to seek approval for lease extensions from the board of
 6 land and natural resources and to require the department of land
 7 and natural resources to utilize the current tax assessed value
 8 for lease extensions.

9 SECTION 2. Section 171-192, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "~~{~~§171-192~~}~~ **Lease restrictions.** (a) The ~~[board,~~
 12 department, from time to time, upon the issuance or during the
 13 term of any intensive agricultural, aquaculture, commercial,
 14 mariculture, special livestock, pasture, hotel, resort, or
 15 industrial lease of public lands within the Hilo community
 16 economic district, may~~{~~

17 ~~{1}~~ ~~Modify~~ modify or eliminate any of the restrictions
 18 specified 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~~
 21 ~~development agreement proposed by the lessee to make~~



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1 ~~substantial improvements to the existing improvements~~
2 ~~or to construct new substantial improvements so long~~
3 ~~as the length of any extension granted does not extend~~
4 ~~the original lease term by more than forty years, or~~
5 ~~(3) Extend the term and modify any provisions of the~~
6 ~~lease,~~
7 ~~to the extent necessary to qualify the lease for mortgage~~
8 ~~lending or guaranty purposes with any federal mortgage lending~~
9 ~~agency; to qualify the lessee for any state or private lending~~
10 ~~institution loan, private loan guaranteed by the State, or any~~
11 ~~loan in which the State and any private lender participates; or~~
12 ~~to amortize the cost of substantial improvements to the demised~~
13 ~~premises that are paid for by the lessee without institutional~~
14 ~~financing].~~

15 (b) Prior to entering into a development agreement, the
16 lessee or the lessee and developer shall submit to the [board]
17 department the plans and specifications for the total
18 development being proposed. The [board] department shall review
19 the plans and specifications [~~and, in determining whether to~~
20 ~~approve the development agreement pursuant to subsection (a)(2),~~
21 ~~consider:] to confirm:~~



- 1 (1) Whether the development proposed in the development
2 agreement is of sufficient worth and value to justify
3 the extension of the lease;
- 4 (2) The estimated period of time to complete the
5 improvements and expected date of completion of the
6 improvements; and
- 7 (3) The minimum revised annual rent based on the [~~fair~~
8 ~~market value~~] current tax assessed value of the lands
9 to be developed, as determined by an appraiser for the
10 department, and the percentage of rent where gross
11 receipts exceed a specified amount.
- 12 (c) An application for an extension of the fixed rental
13 period or term of the lease shall be made to the department
14 within one hundred eighty days, which shall offer the lease fee
15 amount based on the [~~economic life of the substantial~~
16 ~~improvements as determined by the board or an independent~~
17 ~~appraiser;~~] current tax assessed value of the leased premises
18 and without the need for board approval; provided that the
19 approval of any extension shall be subject to the following:
- 20 (1) The demised premises have been used substantially for
21 the purpose for which they were originally leased;



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- 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~~] current tax
10 assessed value as determined under section 171-17(d)
11 at the time of reopening;
- 12 (5) Any federal or private lending institution shall be
13 qualified to do business in the State;
- 14 (6) Proceeds of any mortgage or loan shall be used solely
15 for the operations or substantial improvements on the
16 demised premises;
- 17 (7) Where substantial improvements are financed by the
18 lessee, the lessee shall submit receipts of
19 expenditures within a time period specified by the
20 [~~board,~~] department, otherwise the lease extension
21 shall be canceled; and



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

4 (d) The [~~board,~~] department, from time to time, during the
5 term of any agriculture, intensive agriculture, aquaculture,
6 commercial, mariculture, special livestock, pasture, hotel,
7 resort, or industrial lease of public lands within the Hilo
8 community 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
21 leased area unless otherwise approved by the [~~board,~~]



1 department; provided that the [~~board~~] department
2 determines that the lessee will not be adequately
3 compensated pursuant to the lease provisions.

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

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

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

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

13 (4) The length of the extension shall not exceed a
14 reasonable length of time for the purpose of providing
15 relief and shall in no case extend the original
16 lease's fixed rental period by more than forty years.

17 (f) The applicant for any lease extension pursuant to this
18 section shall pay all costs and expenses incurred by the
19 department in connection with the processing, analyzing, and
20 negotiating of any lease extension request and document and of
21 the development agreement under subsections (a) and (b)."



1 SECTION 3. Section 171-193, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[f]§171-193 [f]~~ Lessees within the last ten years of their
4 lease terms; request for interest. (a) Notwithstanding any
5 other provision of law to the contrary, and except as otherwise
6 provided in section 171-192, 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]~~ department may, during the last ten
11 years of the term of the original lease, submit a written
12 request to the ~~[board]~~ department to initiate a request for
13 interest process as provided in this section.

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

17 (1) Appraise the ~~[value of the land and any improvements~~
18 ~~to the land]~~ current tax assessed value that existed
19 as of the date of the written request pursuant to
20 section 171-17(a) ~~[and require the awardee of a new~~



1 ~~lease executed pursuant to this section to reimburse~~
2 ~~the department for the appraisal]; 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]~~ the current tax assessed value that
18 existed as of the date of the written request;

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



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1 (D) The [~~appraised value~~] current tax assessed value
2 of the land [~~and of any improvements to the land~~]
3 that existed as of the date of the written
4 request;

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

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

12 (c) Within ninety days after the closing date specified in
13 the notice, the [~~board~~] department shall determine if any
14 persons have qualified under the terms of the request for
15 qualifications and shall notify all persons who expressed
16 interest as to whether they qualified. Qualified bidders shall
17 be required to deposit an amount equal to one per cent of the
18 value of the leasehold improvements as determined by appraisal,
19 but not less than \$1,000, to be held in an interest bearing
20 account as deposit by the department and returned to the
21 applicant at the applicant's cancellation of interest, the



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1 applicant's unsuccessful bid at auction, or as a credit against
2 the applicant's successful bid at auction. The [~~board~~]
3 department shall also notify the current lessee as to whether
4 any other persons qualified.

5 (d) The [~~board~~] department shall proceed to dispose of the
6 land in accordance with section 171-41.6."

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

10

INTRODUCED BY: *Sharon R. Snowye*



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Report Title:

Board of Land and Natural Resources; Lease Extensions; Hilo
Community Economic District

Description:

Repeals the requirement for Board of Land and Natural Resources approval for lease extensions in the Hilo Community Economic District. Requires the Department of Land and Natural Resources to use the current tax assessed value when offering lease extensions to lessees. Requires all applications to the Department of Land and Natural Resources for an extension of fixed rental periods or lease terms to be made within 180 days and confirm lease extensions.

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