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# A BILL FOR AN ACT

RELATING TO UPDATING PUBLIC LAND LEASES ISSUED PURSUANT TO  
CHAPTER 171, HAWAII REVISED STATUTES.

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

1           SECTION 1. The legislature finds that an audit conducted  
2 by the state auditor at the direction of the legislature made  
3 critical findings regarding the special land and development  
4 fund within the department of land and natural resources. The  
5 auditor's findings and recommendations were contained in Audit  
6 Report No. 19-12. Subsequently, a house investigative committee  
7 (committee) was established on April 29, 2021 to review the  
8 audit.

9           The legislature finds that to address recommendations  
10 made by the committee, the board of land and natural resources  
11 should require, upon approval of an extension of a lease, an  
12 update to the terms and conditions of a lease to reflect the  
13 most current lease form. This Act is intended to apply to all  
14 leases issued under chapter 171, Hawaii Revised Statutes,  
15 regardless of whether they were issued by public auction or  
16 direct negotiation. The legislature also finds that the Hawaii



1 Supreme Court's decision in *State v. Kahua Ranch, Ltd.*, 47 Haw.  
2 28, 384 P.2d 581 (1963), *aff'd on reh'g*, 47 Haw. 466, 390 P.2d  
3 737, prohibited reforming leases in a way that would be  
4 inconsistent with the terms of the notice of sale, but that case  
5 does not apply to the terms and conditions in an extended lease.  
6 Therefore, it should be clear that extended lease terms must be  
7 drafted using current, board-approved terms and conditions.

8       The purpose of this Act is to require that lease extensions  
9 approved by the board of land and natural resources update the  
10 lease terms and conditions to reflect the most current standard  
11 lease form terms and conditions and ensure that in the event of  
12 a conflict or inconsistency between an updated lease term or  
13 condition authorized under chapter 171, Hawaii Revised Statutes,  
14 and a term or condition of the lease being extended, the updated  
15 lease term or condition authorized under chapter 171, Hawaii  
16 Revised Statutes, shall control.

17       SECTION 2. Section 171-36, Hawaii Revised Statutes, is  
18 amended to read as follows:

19       "**§171-36 Lease restrictions; generally.** (a) Except as  
20 otherwise provided, the following restrictions shall apply to  
21 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
- 10 Department of Veterans Affairs requirements; provided
- 11 that the aggregate of the initial term and extension
- 12 shall in no event exceed seventy-five years;
- 13 (3) No lease shall be made for any land under a lease that
- 14 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 owed to 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, the assignment
- 21 and transfer of a lease or unit thereof may be made in



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



1 the case where the lessee is required to pay rent  
2 based on a percentage of its gross receipts, the  
3 receipts of the sublessee shall be included as part of  
4 the lessee's gross receipts; provided further that the  
5 board shall have the right to review and, if  
6 necessary, revise the rent of the demised premises  
7 based upon the rental rate charged to the sublessee,  
8 including the percentage rent, if applicable, and  
9 provided that the rent may not be revised downward;

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

13 (8) Mineral and metallic rights and surface and ground  
14 water shall be reserved to the State; and

15 (9) No lease of public lands, including submerged lands,  
16 or any extension of any lease of public lands shall be  
17 issued by the State to any person to construct, use,  
18 or maintain a sunbathing or swimming pier or to use  
19 the lands for those purposes, unless the lease, or any  
20 extension thereof, contains provisions permitting the  
21 general public to use the pier facilities on the



1 public lands and requiring that a sign or signs be  
2 placed on the pier, clearly visible to the public,  
3 that indicates the public's right to the use of the  
4 pier. The board, at the earliest practicable date,  
5 and where legally possible, shall cause all existing  
6 leases to be amended to conform to this paragraph.  
7 The term "lease", for the purposes of this paragraph,  
8 includes month-to-month rental agreements and similar  
9 tenancies.

10 (b) The board, from time to time, upon the issuance or  
11 during the term of any intensive agricultural, aquaculture,  
12 commercial, mariculture, special livestock, pasture, or  
13 industrial lease, may:

- 14 (1) Modify or eliminate any of the restrictions specified  
15 in subsection (a);
- 16 (2) Extend or modify the fixed rental period of the lease;  
17 provided that the aggregate of the initial term and  
18 any extension granted shall not exceed sixty-five  
19 years; or
- 20 (3) Extend the term of the lease,



1 to the extent necessary to qualify the lease for mortgage  
2 lending or guaranty purposes with any federal mortgage lending  
3 agency, to qualify the lessee for any state or private lending  
4 institution loan, private loan guaranteed by the State, or any  
5 loan in which the State and any private lender participates, or  
6 to amortize the cost of substantial improvements to the demised  
7 premises that are paid for by the lessee without institutional  
8 financing.

9 (c) Any extension authorized pursuant to subsection (b)  
10 shall be based on the economic life of the improvements as  
11 determined by the board or an independent appraiser; provided  
12 that the approval of any extension shall be subject to the  
13 following:

- 14 (1) The demised premises have been used substantially for  
15 the purpose for which they were originally leased;
- 16 (2) The aggregate of the initial term and any extension  
17 granted shall not be for more than sixty-five years;
- 18 (3) In the event of a reopening, the rental for any  
19 ensuing period shall be the fair market rental at the  
20 time of reopening;



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

3 (5) Proceeds of any mortgage or loan shall be used solely  
4 for the operations or improvements on the demised  
5 premises; and

6 (6) Where improvements are financed by the lessee, the  
7 lessee shall submit receipts of expenditures within a  
8 time period specified by the board or else the lease  
9 extension shall be canceled[; ~~and~~

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

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



1 necessary to effect or accommodate the alternative use or uses.

2 An alternative use or uses may be allowed by the board upon:

3 (1) The application of the lessee;

4 (2) Consent of each holder of record having a security  
5 interest in the leasehold; and

6 (3) A finding by the board that the alternative use or  
7 uses are in the public interest.

8 (e) The board, from time to time during the term of any  
9 agriculture, intensive agriculture, aquaculture, commercial,  
10 mariculture, special livestock, pasture, or industrial lease,  
11 may modify or eliminate any of the restrictions specified in  
12 subsection (a), extend or modify the fixed rental period of the  
13 lease, or extend the term of the lease upon a showing of  
14 significant economic hardship directly caused by:

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

19 (2) A taking of a portion of the area of the lease by  
20 government action by eminent domain, withdrawal, or  
21 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 (f) The approval of any extension granted pursuant to  
7 subsection (e) shall be subject to the following:

8 (1) The demised premises have 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)]~~ (4) 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 (g) Any lease extended pursuant to this section shall be  
21 drafted on the most current approved lease form, and may include



1 the imposition of a removal bond, to ensure that the extension  
2 of any lease pursuant to this section, as with the issuance of a  
3 new lease, will be subject to the most current leasing practices  
4 and policies of the board, which shall be incorporated into the  
5 lease document prior to its execution.

6 (h) In the event the extension of a lease results in a  
7 conflict or inconsistency between an updated lease term or  
8 condition authorized under this chapter and an existing lease  
9 term or condition, the updated lease term or condition  
10 authorized under this chapter shall control."

11 SECTION 3. Section 171-36.5, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "~~§~~171-36.5~~§~~ **Commercial, industrial, resort, mixed-**  
14 **use, or government leases; extension of term. (a)**

15 Notwithstanding section 171-36, for leases that have not been  
16 assigned or transferred within ten years prior to receipt of an  
17 application for a lease extension submitted pursuant to this  
18 section, the board may extend the rental period of a lease of  
19 public lands for commercial use, industrial use, resort use,  
20 mixed-use, or government use upon the board's approval of a  
21 development agreement proposed by the lessee or by the lessee



1 and developer to make substantial improvements to the existing  
2 improvements. For the purposes of this subsection, "assigned or  
3 transferred" shall not include:

4 (1) A sale or change in ownership of a lessee that is a  
5 company or entity; or

6 (2) A collateral assignment of lease or other security  
7 granted to a leasehold mortgagee in connection with  
8 leasehold financing by a lessee.

9 (b) Before entering into a development agreement, the  
10 lessee or the lessee and developer shall submit to the board the  
11 plans and specifications for the total development proposed.  
12 The board shall review the plans and specifications and  
13 determine:

14 (1) Whether the development proposed in the development  
15 agreement is of sufficient worth and value to justify  
16 the extension of the lease;

17 (2) The estimated period of time necessary to complete the  
18 improvements and expected date of completion of the  
19 improvements; and

20 (3) The minimum revised annual rent based on the fair  
21 market value of the [~~lands to be developed,~~] land and



1           existing improvements, as determined by an appraiser  
2           for the board and, if deemed appropriate by an  
3           appraiser, the appropriate percentage of rent where  
4           gross receipts exceed a specified amount.

5           No lease extension shall be approved until the board and  
6           the lessee or the lessee and developer mutually agree to the  
7           terms and conditions of the development agreement.

8           (c) No construction shall commence until the lessee or the  
9           lessee and developer have filed with the board a sufficient bond  
10          conditioned upon the full and faithful performance of all the  
11          terms and conditions of the development agreement.

12          (d) Any extension of a lease pursuant to this section  
13          shall be based upon the substantial improvements to be made and  
14          shall be for a period no longer than forty years. No lease  
15          shall be transferable or assignable throughout the first ten  
16          years of the extended term, except by devise, bequest, intestate  
17          succession, a collateral assignment of lease or other security  
18          granted to a leasehold mortgagee in connection with leasehold  
19          financing by a lessee, a change in direct ownership of less than  
20          fifty per cent of a lessee that is a company or entity, a change  
21          in indirect ownership of a lessee that is a company or entity,



1 or by operation of law. The prohibition on assignments and  
2 transfer of leases shall include a prohibition on conveyances of  
3 leases. During subsequent periods of the extended term of the  
4 lease, the lease may be assigned or transferred, subject to  
5 approval by the board.

6 (e) The applicant for a lease extension shall pay all  
7 costs and expenses incurred by the department in connection with  
8 processing, analyzing, or negotiating any lease extension  
9 request, lease document, or development agreement under this  
10 section.

11 (f) Any lease extended pursuant to this section shall be  
12 drafted on the most current approved lease form and may include  
13 the imposition of a removal bond to ensure that the extension of  
14 any lease pursuant to this section, as with the issuance of a  
15 new lease, shall be subject to the most current leasing  
16 practices and policies of the board, which shall be incorporated  
17 into the lease document prior to its execution.

18 [~~f~~] (g) As used in this section:

19 "Government use" means a development undertaken under a  
20 lease held by any agency or department of the State or its  
21 political subdivisions other than the University of Hawaii or



1 any department, agency, or administratively attached entity of  
2 the University of Hawaii system.

3 "Mixed-use" means a development that combines two or more  
4 of the following uses in a single project: commercial use,  
5 resort use, multifamily residential use, or government use.

6 "Resort use" means a development that:

7 (1) Provides transient accommodations as defined in  
8 section 237D-1 and related services, which may include  
9 a front desk, housekeeping, food and beverage, room  
10 service, and other services customarily associated  
11 with transient accommodations; and

12 (2) Where at least seventy-five per cent of the living or  
13 sleeping quarters are used solely for transient  
14 accommodations for the term of any lease extension.

15 "Substantial improvements" means any renovation,  
16 rehabilitation, reconstruction, or construction of existing  
17 improvements, including minimum requirements for off-site and  
18 on-site improvements, the cost of which equals or exceeds thirty  
19 per cent of the market value of the existing improvements, that  
20 the lessee or the lessee and developer installs, constructs, and  
21 completes by the date of completion of the total development.



1        (h) In the event the extension of a lease results in a  
2 conflict or inconsistency between an updated lease term or  
3 condition authorized under this chapter and an existing lease  
4 term or condition, the updated lease term or condition  
5 authorized under this chapter shall control."

6        SECTION 4. Section 171-192, Hawaii Revised Statutes, is  
7 amended to read as follows:

8        "[~~†~~]**§171-192**[~~†~~] **Lease restrictions.** (a) The board, from  
9 time to time, upon the issuance or during the term of any  
10 intensive agricultural, aquaculture, commercial, mariculture,  
11 special livestock, pasture, hotel, resort, or industrial lease  
12 of public lands within the Hilo community economic district,  
13 may:

- 14        (1) Modify or eliminate any of the restrictions specified  
15            in section 171-36(a);
- 16        (2) Extend or modify the fixed rental period or the term  
17            of the lease upon approval by the board of a  
18            development agreement proposed by the lessee to make  
19            substantial improvements to the existing improvements  
20            or to construct new substantial improvements so long



1 as the length of any extension granted does not extend  
2 the original lease term by more than forty years; or  
3 (3) Extend the term and modify any provisions of the  
4 lease,

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

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

19 (1) Whether the development proposed in the development  
20 agreement is of sufficient worth and value to justify  
21 the extension of the lease;



1           (2) The estimated period of time to complete the  
2           improvements and expected date of completion of the  
3           improvements; and

4           (3) The minimum revised annual rent based on the fair  
5           market value of the lands to be developed, as  
6           determined by an appraiser for the board, and the  
7           percentage of rent where gross receipts exceed a  
8           specified amount.

9           (c) An extension of the fixed rental period or term of the  
10          lease shall be based on the economic life of the substantial  
11          improvements as determined by the board or an independent  
12          appraiser; provided that the approval of any extension shall be  
13          subject to the following:

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

16          (2) The length of any extension granted for the fixed  
17          rental period of the lease shall not extend the fixed  
18          rental period of the original lease by more than forty  
19          years;



1 (3) The length of any extension granted for the term of  
2 the lease shall not extend the original lease term by  
3 more than forty years;

4 (4) If a reopening occurs, the rental for any ensuing  
5 period shall be the fair market rental as determined  
6 under section 171-17(d) at the time of reopening;

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

9 (6) Proceeds of any mortgage or loan shall be used solely  
10 for the operations or substantial improvements on the  
11 demised premises; and

12 (7) Where substantial improvements are financed by the  
13 lessee, the lessee shall submit receipts of  
14 expenditures within a time period specified by the  
15 board, otherwise the lease extension shall be  
16 canceled[; ~~and~~

17 ~~(8) The rules of the board, setting forth any additional~~  
18 ~~terms and conditions, which shall ensure and promote~~  
19 ~~the purposes of the demised lands].~~

20 (d) The board, from time to time, during the term of any  
21 agriculture, intensive agriculture, aquaculture, commercial,



1 mariculture, special livestock, pasture, hotel, resort, or  
2 industrial lease of public lands within the Hilo community  
3 economic district, may modify or eliminate any of the  
4 restrictions specified in section 171-36(a), extend or modify  
5 the fixed rental period of the lease, or extend the term of the  
6 lease upon a showing of significant economic hardship directly  
7 caused by:

8 (1) State disaster, pursuant to chapter 209, including  
9 seismic or tidal wave, tsunami, hurricane, volcanic  
10 eruption, typhoon, earthquake, flood, or severe  
11 drought; or

12 (2) A taking of a portion of the area of the lease by  
13 government action by eminent domain, withdrawal, or  
14 conservation easement; provided that the portion taken  
15 shall not be less than ten per cent of the entire  
16 leased area unless otherwise approved by the board;  
17 provided that the board determines that the lessee  
18 will not be adequately compensated pursuant to the  
19 lease provisions.

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



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

3 (2) The rental shall not be less than the rental for the  
4 preceding term;

5 ~~[(3) The rules of the board, setting forth any additional  
6 terms and conditions which shall ensure and promote  
7 the purposes of the demised lands;]~~ and

8 ~~[(4)]~~ (3) The length of the extension shall not exceed a  
9 reasonable length of time for the purpose of providing  
10 relief and shall in no case extend the original  
11 lease's fixed rental period by more than forty years.

12 (f) The applicant for any lease extension pursuant to this  
13 section shall pay all costs and expenses incurred by the  
14 department in connection with the processing, analyzing, and  
15 negotiating of any lease extension request and document and of  
16 the development agreement under subsections (a) and (b).

17 (g) Any lease extended pursuant to this section shall be  
18 drafted on the most current approved lease form, and may include  
19 the imposition of a removal bond, to ensure that the extension  
20 of any lease pursuant to this section, as with the issuance of a  
21 new lease, shall be subject to the most current leasing



1 practices and policies of the board, which shall be incorporated  
2 into the lease document prior to its execution.

3 (h) In the event the extension of a lease results in a  
4 conflict or inconsistency between an updated lease term or  
5 condition authorized under this chapter and an existing lease  
6 term or condition, the updated lease term or condition  
7 authorized under this chapter shall control."

8 SECTION 5. This Act does not affect rights and duties that  
9 matured or leases or extensions of leases that are fully  
10 executed before its effective date.

11 SECTION 6. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

DLNR; Public Land; Lease Terms and Conditions; Lease Extensions

**Description:**

Requires that lease extensions approved by the Board of Land and Natural Resources be drafted on forms that reflect contemporary leasing practices and policies of the Board, and which shall control over conflicting or inconsistent provisions in the lease being extended. Takes effect 7/1/2050. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

