

ACT 189

S.B. NO. 764

A Bill for an Act Relating to Real Property.

Be It Enacted by the Legislature of the State of Hawaii:

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

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

In the city and county of Honolulu's "Annual Report on the Status of Land Use on Oahu, Fiscal Year 2006" (February 2008), growth projections show a decided shift of industrial jobs away from the primary urban center. In 2000, approximately eighty per cent of industrial jobs were located in the primary urban center. However, by 2030 that percentage is projected to drop to seventy-one per cent. During that same period, industrial jobs in the Ewa region are projected to nearly double, from seven to thirteen per cent. In central Oahu, industrial jobs are projected to increase from seven to ten per cent.

The legislature further finds that small businesses often depend on commercial and industrial leases, which may contain provisions that are vague or onerous and that eventually force these businesses to relocate to rural areas and away from the urban centers.

The legislature further finds that the proximity of small businesses to urban communities serves to stabilize Hawaii's economy, especially during the United States' current recessionary period. Thus, maintaining close geographic ties between small businesses and the communities they serve is a public purpose that requires legislative support.

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

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

“§519- Leases of commercial and industrial property. (a) Notwithstanding any other law to the contrary and unless expressly stated to the contrary in the lease, any lease of commercial or industrial leasehold property shall be subject to the following terms and conditions:

- (1) Whenever a lease subject to this section provides for the renegotiation of the rental amount or other requirements during the term of the lease and the renegotiated rental amount or other recompense is based, according to the terms of the lease, in whole or in part on a “fair and reasonable” annual rent, that provision shall:
 - (A) Be construed to require that the rent shall be fair and reasonable to both the lessor and the lessee to the lease; and
 - (B) Take into account any and all relevant attendant circumstances relating to the lease, including:
 - (i) The uses and intensity of the use of the leased property during the term of the lease approved by the lessor; and
 - (ii) The surface and subsurface characteristics of the leased property and the surrounding neighborhood on the renegotiation date.
- (2) With respect to a lessee who is a master lessee, paragraph (1), relating to the renegotiation of the lease rental amount charged to the lessee for the leased property, shall apply only if the master lessee agrees to comply with this paragraph when determining the renegotiated sublease rental amount charged to a sublessee. The master lessee shall agree to limit any sublease rental amount renegotiated or renewed during the period the renegotiated lease rent under paragraph (1) is in effect to the lesser of:
 - (A) The “fair and reasonable” amount as determined in accordance with paragraph (1). For the purpose of this subparagraph, the sublease shall be deemed to include a requirement that the renegotiated rental amount be “fair and reasonable”; or
 - (B) The rental amount as calculated under the renegotiation or renewal provisions of the sublease.

Any dispute as to the renegotiated sublease rental amount under subparagraph (A) or (B) shall be resolved in accordance with the dispute resolution provisions of the sublease.

If the sublessee also acts as a sublessor and subleases the property to another person, the master lessee shall make a good faith effort to require the sublessor to comply with this paragraph in determining the sublease rental amount charged to another person. If the master lessee does not comply with this paragraph, paragraph (1) shall not apply in determining the renegotiated lease rental amount charged to the master lessee.

(b) For purposes of this section:

“Commercial or industrial leasehold property” means any ground lease of real property:

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

“Lease” means a conveyance leasing privately owned land by a fee simple owner, as lessor, to any person or entity for a term of ten years or more in consideration of a return of rent or other remuneration.

“Sublease” means a conveyance subleasing privately owned land by a master lessee or sublessor to any person or entity in consideration of a return of rent or other remuneration.”

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

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2009, and shall be repealed on June 30, 2010; provided that the repeal of this Act shall not affect renegotiations of any lease or sublease rental amount, the renegotiation date for which occurred before July 1, 2010; provided further that this Act shall not apply to any lease scheduled for renegotiation after June 30, 2010.

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.