

ACT 149

S.B. NO. 3058

A Bill for an Act Relating to Public Lands.

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

SECTION 1. The legislature finds that the State has a fiduciary duty to manage state lands in the best interests of the public by enhancing state revenues and promoting social, environmental, and economic well-being of Hawaii's people. As the majority landowner in East Hawaii, the State has an enormous influence on the vision, economic development, and overall success of the East Hawaii community.

The legislature further finds that, under existing laws, many public land lessees face uncertain futures following expiration of their leases. The legislature further finds that these lessees have little incentive to make major investments in infrastructural improvements or to ensure the long-term maintenance of facilities on the land. As a result, the infrastructure and facilities on public lands in East Hawaii have been deteriorating in many locations.

The legislature also finds that the Banyan Drive area on the Waiakea Peninsula in East Hawaii, Wailoa State Park, Wailoa Estuary, and the commercial leases in the Kanoiehua Industrial Area are currently facing this difficult economic challenge. Due to the uncertainty regarding continued tenancy, despite East Hawaii being the center of tourism for the island of Hawaii, improvements have not been made and infrastructure has deteriorated, leaving the region underutilized and in disrepair. The legislature further finds that Hilo has the potential for increased growth that can improve workforce and affordable housing, parks

and open space, public facilities, and commercial, industrial, and hotel facilities, and a pilot project in this area has the potential to revive public lands, resulting in more tax revenue and community revitalization, and be assessed to determine whether it can be replicated in other areas of the State.

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

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

**“PART . HILO COMMUNITY ECONOMIC DISTRICT**

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

“Hilo community economic district” means the area beginning at the intersection of Manono Street and Kamehameha Avenue, extending south to Piilani Street, east from Piilani Street to Kalanikoa Street to include Hoolulu Park, and west from the intersection of Manono Street and Piilani Street to tax map key 3-2-2-031-001, inclusive along the coastline to Maile Street until its intersection with Kilauea Avenue and then to Aupuni Street and beyond to include the following tax map keys until intersection with Ponahawai Street: 3-2-2-013-003, 3-2-2-012-001, 3-2-2-012-016, 3-2-2-011-01, and 3-2-2-007-018; extending makai to tax map key 3-2-3-002-016, along the coastline and including tax map key 3-2-2-001-006 until intersection with Lihiwai Street; those lands bounded or abutting Lihiwai Street, inclusive through Banyan Drive until its intersection with Kamehameha Avenue; from Kamehameha Avenue at its intersection with Kalanianaʻole Avenue and extending east on Kalanianaʻole Avenue to include those abutting lands until tax map key 3-2-1-010-033 on the mauka side of the road and tax map key 3-2-1-01-1010 on the makai side of Kalanianaʻole Avenue, to include also any of those lands on Ocean View Drive makai of Kalanianaʻole Avenue and the lands mauka on Silva Street and Keaa Street; the lands within the Hilo airport area managed by the department of land and natural resources as identified on tax map key 3-2-1-12; and the lands abutting or bounded by Kanolehua Avenue extending south to Makaala Street, then east on Makaala Street to Railroad Avenue then north on Railroad Avenue until Leilani Street and east on Leilani Street until tax map key 3-2-2-037-144, then west on Leilani Street until its intersection with Kanolehua Avenue; and all those lands abutting or bounded by Pohaku Street, Kukila Street, Halekauila Street, and Lanikaula Street as identified on tax map key 3-2-2-58; on Kanolehua Avenue heading north from Makaala Street those lands mauka including those lands on Makaala Street, Holumua Street, Pookela Street, Wiwoole Street, and Kawili Street as identified on tax map key 3-2-2-049 and 3-2-2-050; then on Kanolehua Avenue North from Kawili Street and Kalanikoa Street from Piilani Street until they intersect with Kamehameha Avenue.

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

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

- (1) Modify or eliminate any of the restrictions specified in section 171-36(a);
- (2) Extend or modify the fixed rental period or the term of the lease upon approval by the board of a development agreement proposed by the lessee to make substantial improvements to the existing improvements or to construct new substantial improvements so long as the length of any extension granted does not extend the original lease term by more than forty years; or

(3) Extend the term and modify any provisions of the lease, to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency; to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates; or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing.

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

- (1) Whether the development proposed in the development agreement is of sufficient worth and value to justify the extension of the lease;
- (2) The estimated period of time to complete the improvements and expected date of completion of the improvements; and
- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the board, and the percentage of rent where gross receipts exceed a specified amount.

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

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

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

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

- (1) State disaster, pursuant to chapter 209, including seismic or tidal wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or severe drought; or
- (2) A taking of a portion of the area of the lease by government action by eminent domain, withdrawal, or conservation easement; provided that the portion taken shall not be less than ten per cent of the entire leased area unless otherwise approved by the board; provided that the board determines that the lessee will not be adequately compensated pursuant to the lease provisions.

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

- (1) The demised premises has been used substantially for the purposes for which they were originally leased;
- (2) The rental shall not be less than the rental for the preceding term;
- (3) The rules of the board, setting forth any additional terms and conditions which shall ensure and promote the purposes of the demised lands; and
- (4) The length of the extension shall not exceed a reasonable length of time for the purpose of providing relief and shall in no case extend the original lease's fixed rental period by more than forty years.

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

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

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

- (1) Appraise the value of the land and any improvements to the land that existed as of the date of the written request pursuant to section 171-17(a) and require the awardee of a new lease executed pursuant to this section to reimburse the department for the appraisal; and
- (2) Publish a request for interest and request for qualifications notice inviting persons to express their interest in leasing the land and their qualifications as potential lessees and describing any improvements to the land that exist as of the date of the written request. The notice

shall be given at least once statewide and at least once in the county where the land is located and shall contain:

- (A) The qualifications required of eligible lessees which shall conform to department policy for new leases;
- (B) A general description of the land, including the address and tax map key, the termination date of the existing lease, and of any improvements to the land that existed as of the date of the written request;
- (C) That the land to be leased is classified as hotel, resort, or commercial and industrial use pursuant to section 171-10;
- (D) The appraised value of the land and of any improvements to the land that existed as of the date of the written request;
- (E) The closing date and manner by which a person shall indicate interest and submit a statement of qualifications; and
- (F) Notice that a current business plan is a prerequisite to participate at time of auction or direct negotiation, if applicable, and shall be made a term of the lease.

(c) Within ninety days after the closing date specified in the notice, the board shall determine if any persons have qualified under the terms of the request for qualifications and shall notify all persons who expressed interest as to whether they qualified. Qualified bidders shall be required to deposit an amount equal to one per cent of the value of the leasehold improvements as determined by appraisal, but not less than \$1,000, to be held in an interest bearing account as deposit by the department and returned to the applicant at the applicant's cancellation of interest, the applicant's unsuccessful bid at auction, or as a credit against the applicant's successful bid at auction. The board shall also notify the current lessee as to whether any other persons qualified.

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

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

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

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

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

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

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

(Approved July 6, 2018.)