

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 14, 2022

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Statewide

Report to the Board of Land and Natural Resources on Issues Encountered by
Land Division in Processing Applications for Lease Extensions Statewide.

BACKGROUND:

The Board of Land and Natural Resources (Board) has approved dozens of lease extensions in the past decade pursuant to three legislative acts passed in 2011 and 2018, namely: Act 207, Sessions Laws of Hawaii (SLH) 2011 (Act 207); Act 219, SLH 2011 (Act 219); and Act 149, SLH 2018 (Act 149). In 2021, the legislature passed a fourth lease extension act, Act 236 SLH 2021 (Act 236), under which no lessee has submitted an application to date, though some lessees have expressed interest in extensions under this most recent act.

One of the 2011 legislative acts (Act 219) applied only to hotel and resort leases and specifically required any lease extension to be based on the most current lease form and leasing practices and policies of the Board. The leases that were extended pursuant to Act 219 were accordingly updated as provided by the act. The other lease extension acts did not include this express language.

The Department of the Attorney General (ATG) has construed the 2018 act, Act 149, to allow for the updating of only directly negotiated leases, but not leases issued through the public auction process. This may also be the case for lease extensions under Act 236 from 2021.

As discussed in more detail below, the acts lead to disparate results for lessees seeking extensions depending on how their leases were initially issued. Land Division believes the prospect of this disparate treatment merits bringing to the attention of the Board.

DISCUSSION:

Act 207 SLH 2011¹

Many of the State’s commercial, industrial, hotel and resort leases were issued at initial terms of 55 years, even though the maximum initial lease term allowed under Chapter 171, Hawaii Revised Statutes (HRS), was and is 65 years for these types of uses. While Section 171-36, HRS, authorized lease extensions even before the passage of Act 207, the prior law provided that the aggregate of the initial term and any extension could not exceed 55 years.

In the Kanoiehua Industrial Area (KIA) in Hilo, many of the State’s commercial and industrial leases were issued in the early 1960s and their 55-year terms were set to expire around 2016. In 2011, a bill was introduced in the legislature to amend the statute to authorize lease extensions up to the 65 years permitted for an initial disposition. This led to the adoption of Act 207, which was later codified at Section 171-36, HRS. To qualify for a lease extension under the amended Section 171-36, the applicant must show the extension is either necessary to qualify for mortgage financing or to amortize the cost of substantial improvements without financing. As used in Act 207 and Section 171-36, HRS, the term “substantial improvements” is not quantified in any way.

In documenting the 10-year extensions under Act 207, Land Division used a short form extension document prepared and approved by ATG that essentially extended the leases on their original terms regardless of whether the leases were issued by direct negotiation or public auction. The rationale for this was that the 10-year extensions under Act 207 were relatively short-term bringing the leases to the full 65-year term at which they could have initially been authorized. About 45 leases were authorized for extension under Act 207.

Act 219 SLH 2011²

The legislature passed Act 219 to authorize extension of hotel and resort leases up to a maximum of 55 years for lessees committing to making substantial improvements to their lease premises. “Substantial improvements” was defined in the act to mean:

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 fifty per cent of the market value of the existing

¹ A copy of Governor’s Message No. 1311 transmitting Act 207 to the legislature is attached as Exhibit A.

² A copy of Governor’s Message No. 1323 transmitting Act 219 to the legislature is attached as Exhibit B.

improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.

As noted above, Act 219 expressly required the extended leases to be updated to the Board's current lease forms, practices and policies.³ Four leases were extended pursuant to Act 219 before it sunsetted on December 31, 2015 and all four extended leases were updated to the current lease form.

Act 149 SLH 2018⁴

Act 149 authorizes the Board to extend intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, hotel, resort, or industrial leases in the Hilo community economic district, which is defined to include KIA, Waiakea Peninsula and nearby areas. Act 149 is patterned after Section 171-36, HRS, but adds a definition of "substantial improvements" to mean:

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.

Lease extensions under Act 149 cannot extend the original term of the lease by more than 40 years. Accordingly, for any lessee who has already secured a 10-year extension under Act 207 of a lease issued with an initial term of 55-years, the maximum extension allowed under Act 149 is 30 years.⁵

As noted above, Act 149 does not include language similar to Act 219 that expressly requires the use of updated leasing forms. However, the Board has authority to impose that requirement even without express statutory language, at least for leases issued by

³ The requirement for updating leases extended under Act 219 to the current lease form is found at page 4 of the act, lines 4-10. Act 219 does not distinguish between public auction and directly negotiated leases. The four hotel/resort leases extended under Act 219 were all issued by public auction.

⁴ A copy of Governor's Message No. 1250 transmitting Act 149 to the legislature is attached as Exhibit C.

⁵ There are actually two vehicles under Act 149 for a lessee to seek a lease extension: the first was codified at Sections 171-91 and -92, HRS, and is discussed above; the second was codified at Section 171-93, HRS, and involves a more complicated process under which no lessee has applied for an extension to date.

direct negotiation.⁶

To date the Board has approved the extension of five leases under Act 149. One extension has been documented using the Board's updated leasing forms, practices and policies – General Lease No. S-3742 (GL3742) to JH Moku Ola, LLC (JH Moku Ola). GL3742 was issued by direct negotiation. Similar lease extension documents were prepared for the three leases to Hawaii Planing Mill, Ltd. (HPM), which were also issued by direct negotiation.⁷ However, HPM objected to the use of updated forms, taking the position that Act 149 only authorizes the extension of the leases (issued in 1961) on their original terms and conditions. One of the main objections HPM has to the State's lease forms is that the original leases provide that the improvements belong to the State at lease expiration, while the new lease forms give the State the option of accepting ownership of the improvements or requiring the lessee to remove them at its expense.⁸

Another lease extension applicant under Act 149 is 69 Railroad, LLC (69 Railroad) who holds General Lease No. S-3624 (GL3624). GL3624 is distinguishable from GL3742 to JH Moku Ola and the three leases to HPM because 69 Railroad's GL3624 was issued through the public auction process (also in 1961). Pursuant to *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384 P.2d 581 (1963), *aff'd on reh'g*, 47 Haw. 466, 390 P.2d 737, *reh'g denied*, 47 Haw. 485, 391 P.2d 872 (1964), public auction leases cannot be amended, even if the State and the lessee were both to agree to an amendment, or, in the case of the Kahua Ranch lease, where there is a mutual mistake of fact. Staff prepared a draft of a submittal for an extension of GL3624 but it has not been placed on a Board agenda yet because of the issues it presents.

First, the 69 Railroad lease does not contain language allowing the State to adjust the lease rent based on the sublease rent charged to the sublessee.⁹ While there is statutory authority under Section 171-36, HRS, for the Board to adjust the lease rent in such circumstances, staff understands the conflict between the original lease and the provisions of the statute prevents the application of the statute to GL3624.

⁶ Many of the KIA leases were issued by direct negotiation under disaster relief legislation enacted after the 1960 tsunami that impacted Hilo and other parts of the State.

⁷ The fifth Act 149 extension the Board approved is for General Lease No. S-3935 to Nagakura Trust (an auction lease) that is still in process.

⁸ The issue of who is responsible for the potential demolition of improvements at the end of a lease is an important one. In the case of the former Uncle Billy's Hilo Bay Hotel, the leases for the property provided that the improvements belonged to the State at the end of the lease. When the leases expired, the improvements were in such poor condition that the County of Hawaii ordered the closure of the hotel, which has been shuttered since 2017. A February 2018 professional estimate procured by Land Division put the cost of demolition of the improvements in excess of \$8 million.

⁹ 69 Railroad reported 11 subleases on the lease premises of GL3624.

Second, similar to the HPM situation, the 69 Railroad lease provides that at the expiration of the lease, title to the improvements vests in the State. The current lease provision on ownership of improvements at lease expiration gives the State the option of assuming ownership or requiring the lessee to remove them at lessee's expense. The State has used the current provision giving the State the option of ownership of improvements since about the mid-1960s. Yet, without an express provision in Act 149 authorizing the updating of lease forms, public auction leases such as GL3624 to 69 Railroad must remain in their outdated, original forms.

If the Board were to approve 69 Railroad's extension request, under current law the result would be that the 69 Railroad lease is extended for 30 years (through 2056) on a 1961 lease form that does not allow the State to participate in sublease rents yet requires the State to remove the improvements upon lease expiration at State expense (assuming the improvements have outlived their useful lives after a 95-year aggregate lease term). On the other hand, for the HPM leases, whose extension the Board has already approved, the lease extension documents have been updated to include the standard language on subleasing¹⁰ and ownership of improvements at lease expiration.¹¹

Applying Act 149 so that one subset of leases is updated to the current lease form upon extension while another subset of leases is extended on their original forms gives the appearance of the State favoring public auction leaseholders, which would likely lead to complaints by the directly negotiated leaseholders.¹² The State's lessees may argue that the easy solution is simply to extend all qualified leases on their original terms to avoid the potential for disparate treatment noted above. However, staff does not believe that extending all eligible leases on their outdated, original terms and conditions is in the best interest of the State.

Act 236 SLH 2021¹³

Similar to Act 149, Act 236 authorizes the Board to extend commercial, industrial, resort, mixed use, or government leases up to 40 years when certain conditions are met, including a commitment to make substantial improvements to the premises. "Substantial

¹⁰ Subleasing is not currently an issue in the HPM leases as HPM occupies the entire lease premises for its own business.

¹¹ Although the lease extension documents have been prepared, to date HPM has not signed them. Rather, HPM requested some revisions to the leases that are still under review by Land Division and ATG.

¹² Of the twelve applications for Act 149 lease extensions received to date, half are for auction leases and half are for directly negotiated leases.

¹³ A copy of Governor's Message No. 1364 transmitting Act 236 to the legislature is attached as Exhibit D.

improvements” means:

any renovation, rehabilitation, reconstruction, or construction of 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 installs, constructs, and completes by the date of completion of the total development.

Also like Act 149, Act 236 does not include language similar to Act 219 that expressly requires the use of updated leasing forms.¹⁴ Unlike Act 149, Act 236 has statewide applicability. But Act 236 has other restrictions, such as limiting eligibility to leases that have not been assigned or transferred within 10 years prior to the receipt of an application for a lease extension. Further, there are restrictions on the assignability of a lease within the first 10 years of the extension period.

To date, Land Division has not received any applications for lease extensions under Act 236. At least one lessee has expressed interest in an Act 236 extension and Land Division expects other will want to apply for extensions under this act. Staff further anticipates that the same issues discussed above (under the heading for Act 149) regarding the different results for auction leases vs. direct negotiation leases in terms of updating leases to the Board’s current forms, practices and policies will arise in the processing of Act 236 extensions.

Closing Remarks

Land Division would prefer to treat all Act 149 and Act 236 lease extension requests uniformly so that the leases the Board approves for extension are updated to the Board’s current form, practices, and policies. To do that may require amendments of the acts, which some of the State’s lessees will likely oppose. As the Board is aware, the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01 (Committee), has been examining the Department’s leasing practices to determine if there are areas for improvement. In light of the amount of attention lease extension issues have received recently, both in the Committee hearings and in the 2021 legislative hearings on the bill that became Act 236, staff believes that it is in the State’s best interests to explore the possibility of appropriate amendments to Act 149 and Act 236.

¹⁴ Act 236 does include a requirement that no lease extension be approved unless the Board and the lessee/developer agree on terms and conditions of the development agreement. It is possible the Department and Board could take the position they will not approve a lease extension unless lessee agrees in the development agreement that its lease will be updated to most current form. However, this approach would still not address the *Kahua Ranch* issue discussed above (auction leases can only be extended upon their original terms and conditions), and does not advance the State’s interest in achieving uniformity in applying the various extension acts discussed here.

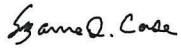
Respectfully Submitted,



Kevin E. Moore
Assistant Administrator

APPROVED FOR SUBMITTAL:

RT



Suzanne D. Case, Chairperson

EXHIBIT A



GOV. MSG. NO. **1311**

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 8, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 8, 2011, the following bill was signed into law:

HB331 HD2 SD2 CD1

RELATING TO PUBLIC LANDS
Act 207 (11)


NEIL ABERCROMBIE

Governor, State of Hawaii

EXHIBIT A

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. Section 171-36, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The board, from time to time, upon the issuance or
4 during the term of any intensive agricultural, aquaculture,
5 commercial, mariculture, special livestock, pasture, or
6 industrial lease, may:

7 (1) Modify or eliminate any of the restrictions specified
8 in subsection (a);

9 (2) Extend or modify the fixed rental period of the lease;
10 provided that the aggregate of the initial term and
11 any extension granted shall not exceed sixty-five
12 years; or

13 (3) Extend the term of the lease,
14 to the extent necessary to qualify the lease for mortgage
15 lending or guaranty purposes with any federal mortgage lending
16 agency, to qualify the lessee for any state or private lending
17 institution loan, private loan guaranteed by the State, or any



1 loan in which the State and any private lender participates, or
2 to amortize the cost of substantial improvements to the demised
3 premises that are paid for by the lessee without institutional
4 financing, such extension being based on the economic life of
5 the improvements as determined by the board or an independent
6 appraiser; provided that the approval of any extension shall be
7 subject to the following:

8 (1) The demised premises have been used substantially for
9 the purpose 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~~] sixty-
12 five years;

13 (3) In the event of a reopening, the rental for any
14 ensuing period shall be the fair market rental at the
15 time of reopening;

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

18 (5) Proceeds of any mortgage or loan shall be used solely
19 for the operations or improvements on the demised
20 premises;



(6) Where 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

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

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

APPROVED this 8 day of JUL , 2011


GOVERNOR OF THE STATE OF HAWAII



EXHIBIT B



GOV. MSG. NO. 1323

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

July 11, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

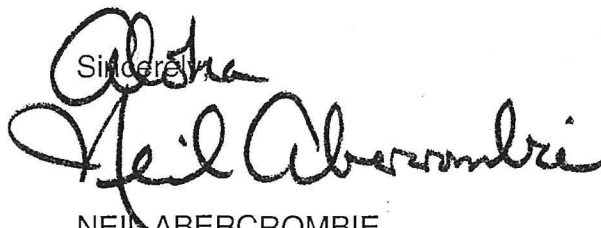
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on July 11, 2011, the following bill was signed into law:

SB1530 SD1 HD2 CD1

RELATING TO PUBLIC LANDS
Act 219 (11)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

EXHIBIT B

Approved by the Governor

on JUL 11 2011

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2011
STATE OF HAWAII

ACT 219

S.B. NO. 1530
S.D. 1
H.D. 2
C.D. 1

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 many of the leases
2 for hotel and resort properties on state land, such as in the
3 Banyan Drive area in Hilo, Hawaii, are nearing the end of the
4 lease term. Faced with the uncertainty of continued tenancy,
5 lessees have little incentive to make major investments in
6 infrastructural improvements and to ensure the long-term
7 maintenance of the facilities. As a result, the infrastructure
8 on these properties has been deteriorating.

9 Act 55, Session Laws of Hawaii 2000, attempted to address
10 the problem of deteriorating hotel and resort infrastructure in
11 east Hawaii on the island of Hawaii by authorizing the board of
12 land and natural resources to issue new leases to the existing
13 lessees in the Banyan Drive area. However, this Act was later
14 found to be unconstitutional under article XI, section 5, of the
15 Hawaii State Constitution.

16 The legislature finds that business lessees typically sell
17 or assign their leases that are nearing the end of the lease
18 terms at a discount, and believes that it would be unfair to the

2011-2328 SB1530 CD1 SMA.doc



EXHIBIT B

1 prior assignors of the leases if the State granted extensions of
2 leases that previously could not be extended under existing law
3 or lease terms to the newly-assigned lessees who acquired their
4 leases at a discount due to short remaining lease terms.

5 The purpose of this Act is to authorize the board of land
6 and natural resources to extend hotel or resort leases that have
7 not been sold or assigned within the last five years, for
8 lessees who commit to substantial improvement to the existing
9 improvements.

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

13 "§171- Hotel or resort leases; extension of term. (a)
14 Notwithstanding section 171-36, the board may extend the rental
15 period of a lease of public lands for hotel or resort use upon
16 the approval by the board of a development agreement proposed by
17 the lessee or by the lessee and developer to make substantial
18 improvements to the existing improvements.

19 (b) Prior to entering into a development agreement, the
20 lessee or the lessee and developer shall submit to the board the
21 plans and specifications for the total development being



1 proposed. The board shall review the plans and specifications
2 and determine:

3 (1) Whether the development proposed in the development
4 agreement is of sufficient worth and value to justify
5 the extension of the lease;

6 (2) The estimated period of time to complete the
7 improvements and expected date of completion of the
8 improvements; and

9 (3) The minimum revised annual rent based on the fair
10 market value of the lands to be developed, as
11 determined by an appraiser for the board, and the
12 percentage of rent where gross receipts exceed a
13 specified amount.

14 No lease extension shall be approved until the board and the
15 lessee or the lessee and developer mutually agree to the terms
16 and conditions of the development agreement.

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



1 (d) Any extension of a lease pursuant to this section
2 shall be based upon the substantial improvements to be made and
3 shall be for a period not longer than fifty-five years.

4 (e) Any extension of a lease granted pursuant to this
5 section shall be effectuated, documented, and executed using the
6 most current lease form and leasing practices and policies of
7 the board. The intent of this subsection is to ensure that an
8 extended lease, like the issuance of a new lease, will be
9 subject to the most current leasing practices and policies of
10 the board, which shall be incorporated into the lease document.

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

16 (g) As used in this section, "substantial improvements"
17 means any renovation, rehabilitation, reconstruction, or
18 construction of the existing improvements, including minimum
19 requirements for off-site and on-site improvements, the cost of
20 which equals or exceeds fifty per cent of the market value of
21 the existing improvements that the lessee or the lessee and



1 developer install, construct, and complete by the date of
2 completion of the total development.

3 (h) As used in this section, "hotel or resort" means a
4 development that provides transient accommodations as defined in
5 section 237D-1 and related services, which may include a front
6 desk, housekeeping, food and beverage, room service, and other
7 services customarily associated with transient accommodations;
8 provided that no development shall qualify as a hotel or resort
9 under this section unless at least seventy-five per cent of the
10 living or sleeping quarters in the development are used solely
11 for transient accommodations for the term of any lease
12 extension."

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2011;
15 provided that this Act shall be repealed on December 31, 2015.

APPROVED this 11 day of JUL, 2011



GOVERNOR OF THE STATE OF HAWAII

EXHIBIT C



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 6, 2018

GOV. MSG. NO. 1250

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 6, 2018, the following bill was signed into law:

SB3058 SD2 HD2 CD1

RELATING TO PUBLIC LANDS
ACT 149 (18)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXHIBIT C

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. The legislature further finds that
11 these lessees have little incentive to make major investments in
12 infrastructural improvements or to ensure the long-term
13 maintenance of facilities on the land. As a result, the
14 infrastructure and facilities on public lands in East Hawaii
15 have been deteriorating in many locations.

16 The legislature also finds that the Banyan Drive area on
17 the Waiakea Peninsula in East Hawaii, Wailoa State Park, Wailoa
18 Estuary, and the commercial leases in the Kanoelehua Industrial



1 Area are currently facing this difficult economic challenge.
2 Due to the uncertainty regarding continued tenancy, despite East
3 Hawaii being the center of tourism for the island of Hawaii,
4 improvements have not been made and infrastructure has
5 deteriorated, leaving the region underutilized and in disrepair.
6 The legislature further finds that Hilo has the potential for
7 increased growth that can improve workforce and affordable
8 housing, parks and open space, public facilities, and
9 commercial, industrial, and hotel facilities, and a pilot
10 project in this area has the potential to revive public lands,
11 resulting in more tax revenue and community revitalization, and
12 be assessed to determine whether it can be replicated in other
13 areas of the State.

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



1 existing improvements or constructing new substantial
2 improvements.

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

6 "PART . HILO COMMUNITY ECONOMIC DISTRICT

7 §171-A Definitions. As used in this part:

8 "Hilo community economic district" means the area beginning
9 at the intersection of Manono Street and Kamehameha Avenue,
10 extending south to Piilani Street, east from Piilani Street to
11 Kalanikoa Street to include Hoolulu Park, and west from the
12 intersection of Manono Street and Piilani Street to tax map key
13 3-2-2-031-001, inclusive along the coastline to Maile Street
14 until its intersection with Kilauea Avenue and then to Aupuni
15 Street and beyond to include the following tax map keys until
16 intersection with Ponahawai Street: 3-2-2-013-003, 3-2-2-012-
17 001, 3-2-2-012-016, 3-2-2-011-01, and 3-2-2-007-018; extending
18 makai to tax map key 3-2-3-002-016, along the coastline and
19 including tax map key 3-2-2-001-006 until intersection with
20 Lihiwai Street; those lands bounded or abutting Lihiwai Street,



1 inclusive through Banyan Drive until its intersection with
2 Kamehameha Avenue; from Kamehameha Avenue at its intersection
3 with Kalanianaʻole Avenue and extending east on Kalanianaʻole
4 Avenue to include those abutting lands until tax map key 3-2-1-
5 010-033 on the mauka side of the road and tax map key 3-2-1-01-
6 1010 on the makai side of Kalanianaʻole Avenue, to include also
7 any of those lands on Ocean View Drive makai of Kalanianaʻole
8 Avenue and the lands mauka on Silva Street and Keaa Street; the
9 lands within the Hilo airport area managed by the department of
10 land and natural resources as identified on tax map key 3-2-1-
11 12; and the lands abutting or bounded by Kanoelehua Avenue
12 extending south to Makaala Street, then east on Makaala Street
13 to Railroad Avenue then north on Railroad Avenue until Leilani
14 Street and east on Leilani Street until tax map key 3-2-2-037-
15 144, then west on Leilani Street until its intersection with
16 Kanoelehua Avenue; and all those lands abutting or bounded by
17 Pohaku Street, Kukila Street, Halekauila Street, and Lanikaula
18 Street as identified on tax map key 3-2-2-58; on Kanoelehua
19 Avenue heading north from Makaala Street those lands mauka
20 including those lands on Makaala Street, Holumua Street, Pookela



1 Street, Wiwoole Street, and Kawili Street as identified on tax
2 map key 3-2-2-049 and 3-2-2-050; then on Kanoelehua Avenue North
3 from Kawili Street and Kalanikoa Street from Piilani Street
4 until they intersect with Kamehameha Avenue.

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

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

17 (1) Modify or eliminate any of the restrictions specified
18 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



1 development agreement proposed by the lessee to make
2 substantial improvements to the existing improvements
3 or to construct new substantial improvements so long
4 as the length of any extension granted does not extend
5 the original lease term by more than forty years; or

6 (3) Extend the term and modify any provisions of the
7 lease,

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

16 (b) Prior to entering into a development agreement, the
17 lessee or the lessee and developer shall submit to the board the
18 plans and specifications for the total development being
19 proposed. The board shall review the plans and specifications



1 and, in determining whether to approve the development agreement
2 pursuant to subsection (a) (2), consider:

3 (1) Whether the development proposed in the development
4 agreement is of sufficient worth and value to justify
5 the extension of the lease;

6 (2) The estimated period of time to complete the
7 improvements and expected date of completion of the
8 improvements; and

9 (3) The minimum revised annual rent based on the fair
10 market value of the lands to be developed, as
11 determined by an appraiser for the board, and the
12 percentage of rent where gross receipts exceed a
13 specified amount.

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

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



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



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

4 (d) The board, from time to time, during the term of any
5 agriculture, intensive agriculture, aquaculture, commercial,
6 mariculture, special livestock, pasture, hotel, resort, or
7 industrial lease of public lands within the Hilo community
8 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



1 leased area unless otherwise approved by the board;
2 provided that the board determines that the lessee
3 will not be adequately compensated pursuant to the
4 lease provisions.

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

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

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

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

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

18 (f) The applicant for any lease extension pursuant to this
19 section shall pay all costs and expenses incurred by the
20 department in connection with the processing, analyzing, and



1 negotiating of any lease extension request and document and of
2 the development agreement under subsections (a) and (b).

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

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

- 16 (1) Appraise the value of the land and any improvements to
17 the land that existed as of the date of the written
18 request pursuant to section 171-17(a) and require the
19 awardee of a new lease executed pursuant to this



1 section to reimburse the department for the appraisal;
2 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 that existed as of the date of the
18 written request;



- 1 (C) That the land to be leased is classified as
2 hotel, resort, or commercial and industrial use
3 pursuant to section 171-10;
- 4 (D) The appraised value of the land and of any
5 improvements to the land that existed as of the
6 date of the written request;
- 7 (E) The closing date and manner by which a person
8 shall indicate interest and submit a statement of
9 qualifications; and
- 10 (F) Notice that a current business plan is a
11 prerequisite to participate at time of auction or
12 direct negotiation, if applicable, and shall be
13 made a term of the lease.
- 14 (c) Within ninety days after the closing date specified in
15 the notice, the board shall determine if any persons have
16 qualified under the terms of the request for qualifications and
17 shall notify all persons who expressed interest as to whether
18 they qualified. Qualified bidders shall be required to deposit
19 an amount equal to one per cent of the value of the leasehold
20 improvements as determined by appraisal, but not less than



1 \$1,000, to be held in an interest bearing account as deposit by
2 the department and returned to the applicant at the applicant's
3 cancellation of interest, the applicant's unsuccessful bid at
4 auction, or as a credit against the applicant's successful bid
5 at auction. The board shall also notify the current lessee as
6 to whether any other persons qualified.

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

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

12 "[~~f~~]\$171-41.6[~~f~~] Lessees within the last ten years of
13 their lease terms; requests for interest. (a) Notwithstanding
14 any other provision of law to the contrary, and except as
15 otherwise provided in [~~section~~] sections 171-36(b) and (d) [~~r~~]
16 and 171-C, a lessee of public land that is classified as
17 commercial and industrial use pursuant to section 171-10, and
18 that is subject to the management, administration, or control of
19 the board may, during the last ten years of the term of the
20 original lease, submit a written request to the board to



1 initiate a request for interest process as provided in this
2 section."

3 SECTION 4. The department of land and natural resources
4 shall review the pilot project established by this Act and
5 submit a report of its findings and recommendations, including
6 any proposed legislation, to the legislature no later than
7 twenty days prior to the convening of the regular session of
8 2019 and every year thereafter.

9 SECTION 5. In codifying the new sections added by section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

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

15 SECTION 7. This Act shall take effect on July 1, 2018, and
16 shall be repealed on June 30, 2028; provided that section
17 171-41.6, Hawaii Revised Statutes, shall be reenacted in the
18 form in which it read on June 30, 2018.

APPROVED this 06 day of JUL, 2018



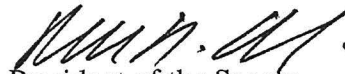
GOVERNOR OF THE STATE OF HAWAII

EXHIBIT C


THE SENATE OF THE STATE OF HAWAI'I

Date: May 1, 2018
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.



President of the Senate



Clerk of the Senate

SB No. 3058, SD 2, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

EXHIBIT D



GOV. MSG. NO. 1364

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 7, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

Re: HB499 HD2 SD2 CD1

Pursuant to Section 16 of Article III of the State Constitution, HB499 HD2 SD2 CD1, entitled "A BILL FOR AN ACT RELATING TO LEASE EXTENSIONS ON PUBLIC LAND" became law without my signature.

This bill authorizes the board of land and natural resources to extend certain leases of public lands for commercial, industrial, resort, mixed-use, or government use upon approval of a proposed development agreement to make substantial improvements to the existing improvements.

Since most of Department of Land and Natural Resources' (DLNR) lands are for forest protection, state parks, or other natural resource protection, it is estimated that the lands under DLNR that could benefit from the extension bill make up less than 1% of the State lands (1.3 million acres) under the jurisdiction of the DLNR.

Lands that are subject to Hawaii Revised Statutes (HRS) chapter 171, include those under DLNR and lands under the Department of Hawaiian Home Lands (DHHL) that are not needed for homestead leases.

Neither military leases nor any properties of the University of Hawai'i can be extended under HB499.

EXHIBIT D

Public lands are generally used for public trust purposes including: support of public schools; betterment of the conditions of native Hawaiians; development of farm and home ownership on as widespread a basis as possible; making of public improvements; and provision of lands for public use.

Some public trust lands are better suited as commercial properties, which earn revenue for the State. HB499 provides stability for both the State and the community by providing a dependable source of income for the State to use for public trust purposes.

Leases can only be extended if the lessee agrees to make substantial improvements equal to or exceeding 30 percent of the market value of the existing improvements. The Administration bill introduced on this topic had a higher threshold of a 50 percent of fair market value of existing improvements.

For the foregoing reasons, I have allowed HB499 HD2 SD2 CD1 to become law as Act 236, Session Laws of Hawaii 2021, on July 6, 2021, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "David Y. Ige", with a stylized flourish at the end.

DAVID Y. IGE
Governor, State of Hawaii

Permitted to become law without the

ORIGINAL

Governor's signature JUL 06 2021

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

ACT 236
H.B. NO.

499
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO LEASE EXTENSIONS ON PUBLIC LAND.

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

1 SECTION 1. The legislature finds that many of the leases
2 for commercial, industrial, resort, mixed-use, and government
3 properties on public land statewide may be nearing the end of
4 the lease term. Faced with the uncertainty of continued
5 tenancy, lessees have little incentive to make major investments
6 in infrastructural improvements and ensure the long-term
7 maintenance of the facilities. As a result, the infrastructure
8 on these properties has been deteriorating.

9 The legislature finds that business lessees typically sell
10 or assign their leases that are nearing the end of the lease
11 terms at a discount. The legislature further finds that it
12 would be unfair to the prior assignors of the leases if the
13 State granted extensions of leases that previously could not be
14 extended under existing law or lease terms to the newly assigned
15 lessees who acquired their leases at a discount due to short
16 remaining lease terms.



1 The purpose of this Act is to authorize the board of land
2 and natural resources to extend commercial, industrial, resort,
3 mixed-use, or government leases, other than those to which the
4 University of Hawaii is a party, that have not been sold or
5 assigned within the last ten years, for lessees who commit to
6 substantial improvement to the existing improvements.

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

10 "§171- Commercial, industrial, resort, mixed-use, or
11 government leases; extension of term. (a) Notwithstanding
12 section 171-36, for leases that have not been assigned or
13 transferred within ten years prior to receipt of an application
14 for a lease extension submitted pursuant to this section, the
15 board may extend the rental period of a lease of public lands
16 for commercial use, industrial use, resort use, mixed-use, or
17 government use upon the board's approval of a development
18 agreement proposed by the lessee or by the lessee and developer
19 to make substantial improvements to the existing improvements.
20 For the purposes of this subsection, "assigned or transferred"
21 shall not include:



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

3 (2) A collateral assignment of lease or other security
4 granted to a leasehold mortgagee in connection with
5 leasehold financing by a lessee.

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

11 (1) Whether the development proposed in the development
12 agreement is of sufficient worth and value to justify
13 the extension of the lease;

14 (2) The estimated period of time necessary to complete the
15 improvements and expected date of completion of the
16 improvements; and

17 (3) The minimum revised annual rent based on the fair
18 market value of the lands to be developed, as
19 determined by an appraiser for the board and, if
20 deemed appropriate by an appraiser, the appropriate



1 percentage of rent where gross receipts exceed a
2 specified amount.

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

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

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



1 leases. During subsequent periods of the extended term of the
2 lease, the lease may be assigned or transferred, subject to
3 approval by the board.

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

9 (f) As used in this section:

10 "Government use" means a development undertaken under a
11 lease held by any agency or department of the State or its
12 political subdivisions other than the University of Hawaii or
13 any department, agency, or administratively attached entity of
14 the University of Hawaii system.

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

18 "Resort use" means a development that:

19 (1) Provides transient accommodations as defined in
20 section 237D-1 and related services, which may include
21 a front desk, housekeeping, food and beverage, room



1 service, and other services customarily associated
2 with transient accommodations; and
3 (2) Where at least seventy-five per cent of the living or
4 sleeping quarters are used solely for transient
5 accommodations for the term of any lease extension.
6 "Substantial improvements" means any renovation,
7 rehabilitation, reconstruction, or construction of existing
8 improvements, including minimum requirements for off-site and
9 on-site improvements, the cost of which equals or exceeds
10 thirty per cent of the market value of the existing
11 improvements, that the lessee or the lessee and developer
12 installs, constructs, and completes by the date of completion of
13 the total development."
14 SECTION 3. New statutory material is underscored.
15 SECTION 4. This Act shall take effect upon its approval.

APPROVED this day of , 2021

GOVERNOR OF THE STATE OF HAWAII



HB No. 499, HD 2, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives




Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2021.


President of the Senate


Clerk of the Senate