



GOV. MSG. NO. 860

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 764 SD2 HD2 CD1

On July 15, 2009, Senate Bill No. 764, entitled "A Bill for an Act Relating to Real Property" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to change the process for renegotiating the amount of rent during the term of an existing commercial or industrial lease, unless expressly stated otherwise in the lease. The bill requires the term "fair and reasonable" annual rent of any lease of commercial or industrial leasehold property to be construed as fair and reasonable to both the lessor and the lessee to the lease, and to consider other relevant circumstances relating to the lease, such as surface characteristics of the property. If the lessee is a master lessee, these requirements shall apply if the master lessee agrees to act comparably when determining the renegotiated sublease rental amount charged to a sublessee.

This measure appears to be targeted at a single landowner for the benefit of its lessees. The ability to freely negotiate contracts without government intrusion is essential to a fair and open marketplace and a principle that I support.

However, this bill addresses a case where the free market between lessor and lessee is not functioning. We have seen a concentration of land ownership of urban commercial and industrial properties become centered in a few large firms that distort market forces and leave businesses in Hawaii with little recourse.

It is unfortunate that the actions of a single land owner have created the situation where the Legislature has intervened between the parties, albeit only for a single year.

This bill impacts the renegotiations of lease rent by interjecting, unless otherwise stated in the lease, its construction of "fair and reasonable annual rent" in commercial or industrial

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leases. In addition, this bill requires master lessees to limit any sublease rental amount negotiated or renewed during the period the lease rent is renegotiated with the master lessee to the lesser of a) the "fair and reasonable" amount determined according to the aforementioned requirements or b) the rental amount as calculated under the renegotiation or renewal provisions of the sublease.

For the foregoing reasons, I allowed Senate Bill No. 764 to become law as Act 189, effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a stylized flourish at the end.

LINDA LINGLE

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## A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

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

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



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

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

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



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

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

13           "§519-       Leases of commercial and industrial property.

14           (a) Notwithstanding any other law to the contrary and unless  
15 expressly stated to the contrary in the lease, any lease of  
16 commercial or industrial leasehold property shall be subject to  
17 the following terms and conditions:

18           (1) Whenever a lease subject to this section provides for  
19 the renegotiation of the rental amount or other  
20 requirements during the term of the lease and the  
21 renegotiated rental amount or other recompense is  
22 based, according to the terms of the lease, in whole



1 or in part on a "fair and reasonable" annual rent,  
2 that provision shall:

3 (A) Be construed to require that the rent shall be  
4 fair and reasonable to both the lessor and the  
5 lessee to the lease; and

6 (B) Take into account any and all relevant attendant  
7 circumstances relating to the lease, including:

8 (i) The uses and intensity of the use of the  
9 leased property during the term of the lease  
10 approved by the lessor; and

11 (ii) The surface and subsurface characteristics  
12 of the leased property and the surrounding  
13 neighborhood on the renegotiation date.

14 (2) With respect to a lessee who is a master lessee,  
15 paragraph (1), relating to the renegotiation of the  
16 lease rental amount charged to the lessee for the  
17 leased property, shall apply only if the master lessee  
18 agrees to comply with this paragraph when determining  
19 the renegotiated sublease rental amount charged to a  
20 sublessee. The master lessee shall agree to limit any  
21 sublease rental amount renegotiated or renewed during



1 the period the renegotiated lease rent under paragraph  
2 (1) is in effect to the lesser of:

3 (A) The "fair and reasonable" amount as determined n  
4 accordance with paragraph (1). For the purpose  
5 of this subparagraph, the sublease shall be  
6 deemed to include a requirement that the  
7 renegotiated rental amount be "fair and  
8 reasonable"; or

9 (B) The rental amount as calculated under the  
10 renegotiation or renewal provisions of the  
11 sublease.

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

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



1        (b) For purposes of this section:

2        "Commercial or industrial leasehold property" means any  
3 ground lease of real property:

4        (1) Situated in the State;

5        (2) Zoned by a county for commercial or industrial use;

6        (3) That is subject to a lease with a term of ten years or  
7 more and an unexpired term of five years or more; and

8        (4) Where the lessor is the owner, directly or indirectly,  
9 of fifty thousand square feet or more of industrial  
10 and commercial property in the State.

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

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

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

21        SECTION 4. New statutory material is underscored.





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

APPROVED this                      day of                      , 2009

GOVERNOR OF THE STATE OF HAWAII