
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 to read as follows:

3 "**§171-36 Lease restrictions; generally.** (a) Except as
4 otherwise provided, the following restrictions shall apply to
5 all leases:

6 (1) Options for renewal of terms are prohibited;

7 (2) No lease shall be for a longer term than sixty-five
8 years, except in the case of a residential leasehold
9 which may provide for an initial term of fifty-five
10 years with the privilege of extension to meet the
11 requirements of the Federal Housing Administration,
12 Federal National Mortgage Association, Federal Land
13 Bank of Berkeley, Federal Intermediate Credit Bank of
14 Berkeley, Berkeley Bank for Cooperatives, or Veterans
15 Administration requirements; provided that the
16 aggregate of the initial term and extension shall in
17 no event exceed seventy-five years;



- 1 (3) No lease shall be made for any land under a lease
2 which has more than two years to run;
- 3 (4) No lease shall be made to any person who is in arrears
4 in the payment of taxes, rents, or other obligations
5 owing the State or any county;
- 6 (5) No lease shall be transferable or assignable, except
7 by devise, bequest, or intestate succession; provided
8 that with the approval of the board of land and
9 natural resources, the assignment and transfer of a
10 lease or unit thereof may be made in accordance with
11 current industry standards, as determined by the
12 board; provided further that prior to the approval of
13 any assignment of lease, the board shall have the
14 right to review and approve the consideration to be
15 paid by the assignee and may condition its consent to
16 the assignment of the lease on payment by the lessee
17 of a premium based on the amount by which the
18 consideration for the assignment, whether by cash,
19 credit, or otherwise, exceeds the depreciated cost of
20 improvements and trade fixtures being transferred to
21 the assignee; provided further that with respect to
22 state agricultural leases, in the event of foreclosure



1 or sale, the premium, if any, shall be assessed only
2 after the encumbrances of record and any other
3 advances made by the holder of a security interest are
4 paid;

5 (6) The lessee shall not sublet the whole or any part of
6 the demised premises except with the approval of the
7 board; provided that prior to the approval, the board
8 shall have the right to review and approve the rent to
9 be charged to the sublessee; provided further that in
10 the case where the lessee is required to pay rent
11 based on a percentage of its gross receipts, the
12 receipts of the sublessee shall be included as part of
13 the lessee's gross receipts; provided further that the
14 board shall have the right to review and, if
15 necessary, revise the rent of the demised premises
16 based upon the rental rate charged to the sublessee
17 including the percentage rent, if applicable, and
18 provided that the rent may not be revised downward;

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



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

3 (9) No lease of public lands, including submerged lands,
4 nor any extension of any such lease, shall be issued
5 by the State to any person to construct, use, or
6 maintain a sunbathing or swimming pier or to use the
7 lands for such purposes, unless such lease, or any
8 extension thereof, contains provisions permitting the
9 general public to use the pier facilities on the
10 public lands and requiring that a sign or signs be
11 placed on the pier, clearly visible to the public,
12 which indicates the public's right to the use of the
13 pier. The board, at the earliest practicable date,
14 and where legally possible, shall cause all existing
15 leases to be amended to conform to this paragraph.
16 The term "lease", for the purposes of this paragraph,
17 includes month-to-month rental agreements and similar
18 tenancies.

19 (b) The board, from time to time, upon the issuance or
20 during the term of any intensive agricultural, aquaculture,
21 commercial, mariculture, special livestock, pasture, or
22 industrial lease, may:



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

3 (2) Extend or modify the fixed rental period of the lease;
4 provided that the aggregate of the initial term and
5 any extension granted shall not exceed sixty-five
6 years; or

7 (3) Extend the term of the 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, such extension being based on the economic life of
16 the improvements as determined by the board or an independent
17 appraiser [~~; provided that the~~].

18 (c) The approval of any extension pursuant to subsection

19 (b) shall be subject to the following:

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



- 1 (2) The aggregate of the initial term and any extension
2 granted shall not be for more than [~~fifty-five~~
3 sixty-five years;
- 4 (3) In the event of a reopening, the rental for any
5 ensuing period shall be the fair market rental at the
6 time of reopening;
- 7 (4) Any federal or private lending institution shall be
8 qualified to do business in the State;
- 9 (5) Proceeds of any mortgage or loan shall be used solely
10 for the operations or improvements on the demised
11 premises;
- 12 (6) Where improvements are financed by the lessee, the
13 lessee shall submit receipts of expenditures within a
14 time period specified by the board, otherwise the
15 lease extension shall be canceled; and
- 16 (7) The rules of the board, setting forth any additional
17 terms and conditions, which shall ensure and promote
18 the purposes of the demised lands.
- 19 [~~e~~] (d) The board at any time during the term of any
20 intensive agricultural, aquaculture, or mariculture lease and
21 when justified by sound economic practices or other
22 circumstances, may permit an alternative agricultural,



1 aquaculture, or mariculture use or uses for any portion or
2 portions of the land demised. As a condition to permitting
3 alternative uses, the board may require [~~such~~] other
4 modifications, including rental adjustments or changes in the
5 lease as may be necessary to effect or accommodate the
6 alternative use or uses. An alternative use or uses may be
7 allowed by the board upon:

- 8 (1) The application of the lessee;
- 9 (2) Consent of each holder of record having a security
10 interest in the leasehold; and
- 11 (3) A finding by the board that the alternative use or
12 uses are in the public interest.

13 [~~(d)~~] (e) The board, from time to time, during the term of
14 any agriculture, intensive agriculture, aquaculture, commercial,
15 mariculture, special livestock, pasture, or industrial lease,
16 may modify or eliminate any of the [~~+~~]restrictions[~~+~~] specified
17 in subsection (a), extend or modify the fixed rental period of
18 the lease, or extend the term of the lease upon a showing of
19 significant economic hardship directly caused by:

- 20 (1) State disaster, pursuant to chapter 209, including
21 seismic or tidal wave, tsunami, hurricane, volcanic



1 eruption, typhoon, earthquake, flood, or severe
2 drought; or

3 (2) A taking of a portion of the area of the lease by
4 government action by eminent domain, withdrawal, or
5 conservation easement; provided that the portion taken
6 shall not be less than ten per cent of the entire
7 leased area unless otherwise approved by the board;
8 and provided that the board determines that the lessee
9 will not be adequately compensated pursuant to the
10 lease provisions.

11 [~~e~~] (f) The approval of any extension granted pursuant
12 to subsection [~~d~~] (e) shall be subject to the following:

- 13 (1) The demised premises [~~has~~] have been used
14 substantially for the purposes for which they were
15 originally leased;
- 16 (2) The aggregate of the initial term and any extension
17 granted shall not be for more than fifty-five years;
- 18 (3) The rental shall not be less than the rental for the
19 preceding term;
- 20 (4) The rules of the board, setting forth any additional
21 terms and conditions which shall ensure and promote
22 the purposes of the demised lands; and



1 (5) The length of the extension shall not exceed a
2 reasonable length of time for the purpose of providing
3 relief and shall in no case exceed five years."

4 SECTION 2. Section 197-1, Hawaii Revised Statutes, is
5 amended by amending the definition of "wildlife" to read as
6 follows:

7 "Wildlife" means any non-domesticated member of the animal
8 kingdom, including game birds and mammals designated by law or
9 rules for hunting, whether reared in captivity or not, and
10 includes any part, product, egg or offspring thereof, except
11 aquatic life as defined in this section[-]; provided that
12 "wildlife" shall include certain mammals obtained after being
13 reared, including but not limited to wild pigs, deer, and
14 rabbits."

15 SECTION 3. Section 197-3, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) No species of aquatic life and wildlife shall be
18 deliberately introduced by the department or any persons under
19 this chapter into any habitat within the State, whether the
20 introduction is from without the State into the State or from
21 one area in the State into another area in the State unless the



1 introduction is recommended by the department and authorized by
2 rules of the department pursuant to chapter 91."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

6



Report Title:

Public Lands; Leases; Wildlife; Department of Land and Natural Resources

Description:

Restricts the rental period of certain leases granted by the board of land and natural resources to not more than 65 years. Amends the definition of "wildlife" in chapter 197, Hawaii Revised Statutes, to include certain mammals that are non-domesticated but have been obtained after being reared, including but not limited to wild pigs, deer, and rabbits. Prohibits the introduction of wildlife on public or private lands by any persons without the authorization of the department of land and natural resources. (SD1)

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