
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 eighty-five years, except in the case of a residential
9 leasehold which may provide for an initial term of
10 fifty-five years with the privilege of extension to
11 meet the requirements of the Federal Housing
12 Administration, Federal National Mortgage Association,
13 Federal Land Bank of Berkeley, Federal Intermediate
14 Credit Bank of Berkeley, Berkeley Bank for
15 Cooperatives, or Department of Veterans Affairs
16 requirements; provided that the aggregate of the



1 initial term and extension shall in no event exceed
2 seventy-five years;

3 (3) No lease shall be made for any land under a lease
4 which has more than two years to run;

5 (4) No lease shall be made to any person who is in arrears
6 in the payment of taxes, rents, or other obligations
7 owing the State or any county;

8 (5) No lease shall be transferable or assignable, except
9 by devise, bequest, or intestate succession; provided
10 that with the approval of the board of land and
11 natural resources, the assignment and transfer of a
12 lease or unit thereof may be made in accordance with
13 current industry standards, as determined by the
14 board; provided further that prior to the approval of
15 any assignment of lease, the board shall have the
16 right to review and approve the consideration to be
17 paid by the assignee and may condition its consent to
18 the assignment of the lease on payment by the lessee
19 of a premium based on the amount by which the
20 consideration for the assignment, whether by cash,
21 credit, or otherwise, exceeds the depreciated cost of



1 improvements and trade fixtures being transferred to
2 the assignee; provided further that with respect to
3 state agricultural leases, in the event of foreclosure
4 or sale, the premium, if any, shall be assessed only
5 after the encumbrances of record and any other
6 advances made by the holder of a security interest are
7 paid;

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



- 1 (7) The lease shall be for a specific use or uses and
2 shall not include waste lands, unless it is
3 impractical to provide otherwise;
- 4 (8) Mineral and metallic rights and surface and ground
5 water shall be reserved to the State; and
- 6 (9) No lease of public lands, including submerged lands,
7 nor any extension of any such lease, shall be issued
8 by the State to any person to construct, use, or
9 maintain a sunbathing or swimming pier or to use the
10 lands for such purposes, unless such lease, or any
11 extension thereof, contains provisions permitting the
12 general public to use the pier facilities on the
13 public lands and requiring that a sign or signs be
14 placed on the pier, clearly visible to the public,
15 which indicates the public's right to the use of the
16 pier. The board, at the earliest practicable date,
17 and where legally possible, shall cause all existing
18 leases to be amended to conform to this paragraph.
19 The term "lease", for the purposes of this paragraph,
20 includes month-to-month rental agreements and similar
21 tenancies.



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

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

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

11 (3) Extend the term of the lease,
12 to the extent necessary to qualify the lease for mortgage
13 lending or guaranty purposes with any federal mortgage lending
14 agency, to qualify the lessee for any state or private lending
15 institution loan, private loan guaranteed by the State, or any
16 loan in which the State and any private lender participates, or
17 to amortize the cost of substantial improvements to the demised
18 premises that are paid for by the lessee without institutional
19 financing, such extension being based on the economic life of
20 the improvements as determined by the board or an independent



1 appraiser; provided that the approval of any extension shall be
2 subject to the following:

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

5 (2) The aggregate of the initial term and any extension
6 granted shall not be for more than sixty-five years;

7 (3) In the event of a reopening, the rental for any
8 ensuing period shall be the fair market rental at the
9 time of reopening;

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

12 (5) Proceeds of any mortgage or loan shall be used solely
13 for the operations or improvements on the demised
14 premises;

15 (6) Where improvements are financed by the lessee, the
16 lessee shall submit receipts of expenditures within a
17 time period specified by the board, otherwise the
18 lease extension shall be canceled; and

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



1 (c) The board at any time during the term of any intensive
2 agricultural, aquaculture, or mariculture lease and when
3 justified by sound economic practices or other circumstances,
4 may permit an alternative agricultural, aquaculture, or
5 mariculture use or uses for any portion or portions of the land
6 demised. As a condition to permitting alternative uses, the
7 board may require such other modifications, including rental
8 adjustments or changes in the lease as may be necessary to
9 effect or accommodate the alternative use or uses. An
10 alternative use or uses may be allowed by the board upon:

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

16 (d) The board, from time to time, during the term of any
17 agriculture, intensive agriculture, aquaculture, commercial,
18 mariculture, special livestock, pasture, or industrial lease,
19 may modify or eliminate any of the [†]restrictions[†] specified
20 in subsection (a), extend or modify the fixed rental period of



1 the lease, or extend the term of the lease upon a showing of
2 significant economic hardship directly caused by:

3 (1) State disaster, pursuant to chapter 209, including
4 seismic or tidal wave, tsunami, hurricane, volcanic
5 eruption, typhoon, earthquake, flood, or severe
6 drought; or

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

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

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

19 (2) The aggregate of the initial term and any extension
20 granted shall not be for more than [~~fifty-five~~]
21 seventy-five years;



1 (3) The rental shall not be less than the rental for the
2 preceding term;

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

6 (5) The length of the extension shall not exceed a
7 reasonable length of time for the purpose of providing
8 relief and shall in no case exceed five years.

9 (f) As used in this section, "agriculture or agricultural"
10 means the planting, cultivating, harvesting, and processing of
11 crops, including those planted, cultivated, harvested, and
12 processed for food, ornamental, grazing, ranching, or forestry
13 purposes, including aquatic life farmed or ranched as
14 aquaculture as defined in section 187A-1."

15 SECTION 2. Section 173A-7, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§173A-7[+] Administration and management[-]; reports.

18 (a) The board shall, subject to chapter 171, administer,
19 maintain, and manage any land acquired under the provisions of
20 this chapter, may charge such fees for the use of any such land
21 as it considers to be reasonable, and may construct on such land



1 any improvement which it deems to be necessary to carry out the
2 purposes of this chapter. The board may adopt and from time to
3 time amend regulations implementing the provisions of this
4 chapter.

5 (b) The board shall submit an annual report to the
6 legislature no later than twenty days prior to the convening of
7 each regular session which shall include the following
8 information:

9 (1) A list of all lands that are held by the department
10 and the current zoning status of those lands;

11 (2) A list of all the lands that are under lease, together
12 with:

13 (A) The current lease rent for the land;

14 (B) The number of years remaining under the lease;

15 and

16 (C) The status of the land, if the lease is near the
17 end of its term;

18 (3) A list of all the lands that are land banked or not
19 under lease, together with:

20 (A) The current estimated market value of the land;

21 and



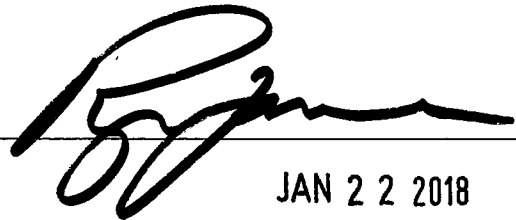
- 1 (B) The status of the land to be leased;
- 2 (4) A list of all lands or interest therein owned by the
- 3 State that were classed as government or crown lands
- 4 previous to August 15, 1895, known as ceded lands,
- 5 together with:
- 6 (A) The current zoning of the ceded lands;
- 7 (B) The current status of the ceded lands;
- 8 (C) The estimated value of ceded lands that are under
- 9 lease; and
- 10 (D) The estimated value of any ceded lands that are
- 11 not under lease.
- 12 (c) The board shall submit an annual report to the
- 13 legislature no later twenty days prior to the convening of each
- 14 regular session on the lands that can be immediately leased for
- 15 agriculture use or affordable housing."

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

18 SECTION 4. This Act shall take effect on July 1, 2018.

19

INTRODUCED BY:



 JAN 22 2018



H.B. NO. 2199

Report Title:

Public Lands; Lease Restrictions; Ceded Lands; Reports

Description:

Limits the term of public land leases, including extensions, to no more than 85 years. Increases the term of specified leases, including the initial and extension periods, upon a showing of significant economic hardship, to 75 years. Requires BLNR to submit annual reports to the Legislature regarding the status of public lands, including ceded lands and lands that can be immediately leased for agriculture or affordable housing.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

