

JAN 18 2019

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 as follows:

3 1. By amending subsections (a) and (b) to read:

4 "(a) Except as otherwise provided, the following
5 restrictions shall apply to 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 thirty-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



S.B. NO. 918

1 initial term and extension of residential leases shall
2 in no event exceed 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;



S.B. NO. 918

- 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 thirty-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~~]
7 thirty-five years;

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

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

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

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



1 (7) 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 2. By amending subsection (e) to read:

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 aggregate of the initial term and any extension
10 granted shall not be for more than [~~fifty-five~~
11 thirty-five years;

12 (3) The rental shall not be less than the rental for the
13 preceding term;

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

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

20 SECTION 2. Section 171-95.1, Hawaii Revised Statutes, is
21 amended to read as follows:

1 " [{}§171-95.1[{}] Authority of board to extend leases under
2 certain circumstances. Notwithstanding the lease restrictions
3 established pursuant to section 171-36, the board may, without
4 public auction, extend a public land lease that is issued to a
5 school or government entity pursuant to section 171-95 beyond
6 the [~~sixty-five~~] thirty-five year maximum lease term. The
7 authority established pursuant to this section to extend a lease
8 shall not apply to any lease to the University of Hawaii of
9 lands within a conservation district of which the University of
10 Hawaii has subleased a portion for the purpose of constructing
11 an astronomical observatory."

12 SECTION 3. Section 171-192, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By amending subsection (a) to read:

15 "(a) The board, from time to time, upon the issuance or
16 during the term of any intensive agricultural, aquaculture,
17 commercial, mariculture, special livestock, pasture, hotel,
18 resort, or industrial lease of public lands within the Hilo
19 community economic district, may:

20 (1) Modify or eliminate any of the restrictions specified
21 in section 171-36(a);



1 (2) Extend or modify the fixed rental period or the term
2 of the lease upon approval by the board of a
3 development agreement proposed by the lessee to make
4 substantial improvements to the existing improvements
5 or to construct new substantial improvements so long
6 as the [~~length of any extension granted does not~~
7 ~~extend the original lease term by more than forty~~
8 ~~years;~~] aggregate of the initial term and any
9 extension granted shall not exceed thirty-five years;

10 or

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

21 2. By amending subsection (c) to read:



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

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

8 ~~[(2) The length of any extension granted for the fixed
9 rental period of the lease shall not extend the fixed
10 rental period of the original lease by more than forty
11 years;~~

12 ~~[(3) The length of any extension granted for the term of
13 the lease shall not extend the original lease term by
14 more than forty years;]~~

15 (2) The aggregate of the initial term and any extension
16 granted shall not exceed thirty-five years;

17 ~~[(4)]~~ (3) If a reopening occurs, the rental for any ensuing
18 period shall be the fair market rental as determined
19 under section 171-17(d) at the time of reopening;

20 ~~[(5)]~~ (4) Any federal or private lending institution shall
21 be qualified to do business in the State;



1 ~~[(6)]~~ (5) Proceeds of any mortgage or loan shall be used
2 solely for the operations or substantial improvements
3 on the demised premises;

4 ~~[(7)]~~ (6) Where substantial improvements are financed by
5 the lessee, the lessee shall submit receipts of
6 expenditures within a time period specified by the
7 board, otherwise the lease extension shall be
8 canceled; and

9 ~~[(8)]~~ (7) The rules of the board, setting forth any
10 additional terms and conditions, which shall ensure
11 and promote the purposes of the demised lands."

12 3. By amending subsection (e) to read:

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

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

17 (2) The rental shall not be less than the rental for the
18 preceding term;

19 (3) 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; and

S.B. NO. 918

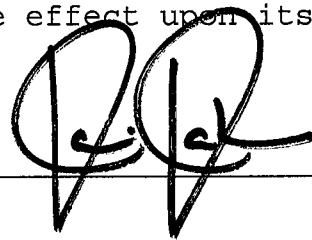
1 (4) The [~~length of the extension shall not exceed a~~
 2 ~~reasonable length of time for the purpose of providing~~
 3 ~~relief and shall in no case extend the original~~
 4 ~~lease's fixed rental period by more than forty years.]~~
 5 aggregate of the initial term and any extension shall
 6 not exceed thirty-five years."

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

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

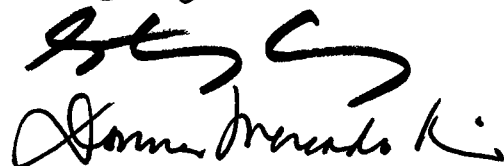
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INTRODUCED BY: _____



Clarence K. Fischer






S.B. NO. 918

Report Title:

Public Lands; Lease Restrictions

Description:

Limits the term of certain public land leases, including any extensions, to no more than thirty-five years.

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

