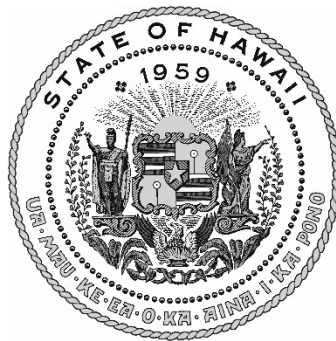


REPORT TO THE THIRTY-FIRST LEGISLATURE
STATE OF HAWAII
2021 REGULAR SESSION

HILO COMMUNITY ECONOMIC DISTRICT



Prepared by

Department of Land and Natural Resources
State of Hawaii

In response to Act 149, Session Laws of Hawaii 2018

December 2020

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PURPOSE

Act 149, Session Laws of Hawaii (SLH) 2018 (Act 149), implemented a 10-year pilot project to allow the Board of Land and Natural Resources (Board) to extend leases in the area of Hilo shown on the attached map for up to 40 years in return for a lessee making substantial improvements to the leasehold premises. “Substantial improvements” is defined in the act to mean renovations or new construction, the cost of which equals or exceeds thirty percent of the market value of the existing improvements. Lessees are required to submit plans and specifications for their proposed development to the Board for approval.

The Board may consider a number of items in determining whether to approve a proposal, including whether the development is of sufficient worth and value to justify an extension, the estimated period of time to complete the improvements, and the minimum revised annual rent based on the fair market value of the land, including percentage rent where gross receipts exceed a specified amount. Any extension granted must relate to the economic life of the substantial improvements as determined by the Board or an independent appraiser. Additionally, an extension cannot exceed the original term of the lease by more than 40 years. The bill imposes on applicants the costs and expenses incurred by the Department in processing, analyzing and negotiating any lease extension request and the development agreement.

Act 149 includes a section that ties into existing law at Section 171-41.6, Hawaii Revised Statutes (HRS). This section is a codification of Act 215, SLH 2017 that allows lessees within the last 10 years of their leases to follow a detailed process to determine whether they can obtain an extension of their leases even beyond the 65-year maximum limit. Extensions can only be permitted if the lessee is the sole qualified responder to a request for interest/request for qualifications (RFI/RFQ) published by the Board regarding a new lease of the land. If there are multiple qualified responders to the RFI/RFQ, then a new lease of the land is auctioned in the final three years of the term of the current lease. Section 171-41.6, HRS, is limited to commercial and industrial leases, while Act 149 opens up this process to resort leases as well.

PROGRESS ON ACT 149 LEASE EXTENSIONS

Act 149 took effect in July 2018 and was codified at Sections 171-191, -192 and -193, HRS. On September 26, 2018, the Chairperson, First Deputy, and Land Division staff of the Department of Land and Natural Resources (Department) met with lessees, legislators and other concerned persons in Hilo regarding the implementation of the Act. Staff explained that any lessee interested in a lease extension would need to submit an application and provide the supporting information required under the law. Staff added that the procedures under the Act 149 would be very similar

to lease extensions previously processed by the Department under Section 171-36(b), HRS, and Act 219, SLH 2011, which allowed for the extension of hotel and resort leases.

At its meetings of June 28, 2019, Item D-3 and July 12, 2019, Item D-3, the Board authorized the Land Division to negotiate development agreements for two leases under Act 149. At its meeting of March 27, 2020, Item D-6, the Board approved the development agreement and lease extension originating from prior Board action of June 28, 2019. At its meeting of June 12, 2020, Item D-3, the Board authorized the Land Division to negotiate a development agreement and approved a thirty-year extension of lease terms for three leases.

Subsequent to the Board's actions of June and July 2019, other lessees approached the Department with a request to streamline the Act 149 process so that only one Board action would be required on their development agreements and lease extensions. The Department reviewed the request with the Department of the Attorney General and determined that if the lessees were willing to pay for appraisals to establish rent in the extension period prior to Board action on an Act 149 request, then the rent could be so determined and presented to the Board at the same time as lessee's development agreement. To date, three lessees have submitted applications for Act 149 extensions under this new process affecting seven separate leases.

FINDINGS AND RECOMMENDATIONS FOR PROPOSED LEGISLATION

Based on applications received and continuing communication with its lessees, the Department finds there is significant interest among its Hilo lessees in securing lease extensions pursuant to Act 149.

The Department introduced an administration bill during the 2019 Legislative Session that would make lease extensions available to all of the Department's commercial, industrial, and resort leases statewide in exchange for the lessee making substantial improvements to the existing structures on the lease premises. Those bills (House Bill 1025 House Draft 1 Senate Draft 1 and Senate Bill 1251 Senate Draft 1) were not passed during the 2019 Legislative Session or as carried over to the 2020 Legislative Session.

