

JAN 20 2017

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

1 SECTION 1. The legislature finds that the State of Hawaii
2 owns a large amount of land that is currently leased to
3 businesses for commercial, industrial, hotel, and resort
4 purposes. The legislature further finds that these leases are
5 statutorily limited to sixty-five years without the possibility
6 of renewing the terms of the lease. In previous years, the
7 legislature has identified significant problems caused by these
8 restrictions on leasehold tenancy and has tried to address the
9 deficiencies by allowing existing lessees of resort properties
10 to renew or extend their leases.

11 The legislature finds that the uncertainty of future tenure
12 has had a catastrophic effect on Hawaii's tourism industry,
13 especially to hotel lands in east Hawaii such as in the Banyan
14 Drive area. During the regular session of 2011, the legislature
15 successfully addressed the restrictions on leasehold tenancy by
16 passing Act 219, Session Laws of Hawaii 2011, which authorized
17 the board of land and natural resources to extend leases of



1 public lands for hotel or resort use upon approval of a proposed
2 development agreement to make substantial improvements to the
3 existing improvements. This change eliminated the "wasting
4 asset" nature of state leasehold properties by incentivizing
5 lessees to invest in infrastructural improvements which promoted
6 the State's economy and the most efficient use of these state
7 lands. While effective, Act 219, Session Laws of Hawaii 2011,
8 was repealed in 2015, and the future tenure of these public
9 lands is once again uncertain.

10 The legislature recognizes that the amount of state land
11 sited and zoned for commercial purposes is small, and great
12 economic harm is caused by not keeping such properties at their
13 highest and best use. It is important that lessees be able to
14 respond to constantly changing communities and community needs
15 by investing immediately and avoiding economic obsolescence.
16 The legislature concludes that while lease restrictions may be
17 productive for certain classes of state lands, the purpose of
18 commercial leases is to be economically productive and the
19 current lease restrictions result in the opposite.

20 The purpose of this Act is to serve the public use and
21 public purpose of state lands used for commercial purposes by



1 authorizing the board of land and natural resources to authorize
2 the extension of commercial, hotel, resort, and industrial
3 leases for the lessees' substantial improvement to the leased
4 premises.

5 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "§171- Commercial, hotel, resort, or industrial leases;
9 extension of term. (a) Notwithstanding section 171-36, the
10 board may extend the lease term of public lands for commercial,
11 hotel, resort, or industrial use upon the approval by the board
12 of a development agreement proposed by the lessee or lessee and
13 developer to make substantial improvements to the demised
14 premises.

15 (b) Prior to entering into a development agreement, the
16 lessee or lessee and developer shall submit to the board the
17 plans and specifications for the total development being
18 proposed. The board shall review the plans and specifications
19 and determine:



1 (1) Whether the development proposed in the development
2 agreement is of sufficient worth and value to justify
3 the extension of the lease;

4 (2) The estimated period of time to complete the
5 improvements and expected date of completion of the
6 improvements; and

7 (3) The minimum revised annual rent based on the fair
8 market value of the lands to be developed, as
9 determined by an appraiser for the board, and
10 percentage rent where gross receipts exceed a
11 specified amount.

12 No lease extension shall be approved until the board and the
13 lessee or lessee and developer mutually agree to the terms and
14 conditions of the development agreement.

15 (c) No construction shall commence until the lessee or
16 lessee and developer have filed with the board a sufficient bond
17 conditioned upon the full and faithful performance of all the
18 terms and conditions of the development agreement.

19 (d) Any extension of a lease pursuant to this section
20 shall be based upon the substantial improvements to be made and
21 shall be for a period no longer than fifty-five years.



1 (e) Similar to the issuance of a new lease, any extension
2 of a lease granted pursuant to this section shall be
3 effectuated, documented, and executed using the most current
4 lease form and leasing practices and policies of the board.

5 (f) The applicant for a lease extension shall pay all
6 costs and expenses incurred by the department in connection with
7 processing, analyzing, and negotiating any lease extension
8 request and document, and the development agreement in
9 subsections (a) and (b).

10 (g) As used in this section "substantial improvements"
11 means any renovation, rehabilitation, reconstruction, or
12 construction of the demised premises, including minimum
13 requirements for off-site and on-site improvements, the cost of
14 which equals or exceeds fifty per cent of the market value of
15 the demised premises, that the lessee or lessee and developer
16 shall install, construct, and complete by the date of completion
17 of the total development."

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2017.

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INTRODUCED BY:



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S.B. NO. 274

Report Title:

Public Lands; Leases; Board of Land and Natural Resources

Description:

Authorizes the board of land and natural resources to extend commercial, hotel, resort, and industrial leases when the lessee makes qualifying substantial improvements to the leased land.

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