
A BILL FOR AN ACT

RELATING TO LEASE EXTENSIONS ON PUBLIC LAND.

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

1 SECTION 1. The legislature finds that many of the leases
2 for commercial, industrial, resort, mixed-use, and government
3 properties on public land statewide may be nearing the end of
4 the lease term. Faced with the uncertainty of continued
5 tenancy, lessees have little incentive to make major investments
6 in infrastructural improvements and to ensure the long-term
7 maintenance of the facilities. As a result, the infrastructure
8 on these properties has been deteriorating.

9 The legislature finds that business lessees typically sell
10 or assign their leases that are nearing the end of the lease
11 terms at a discount. The legislature further finds that it
12 would be unfair to the prior assignors of the leases if the
13 State granted extensions of leases that previously could not be
14 extended under existing law or lease terms to the newly assigned
15 lessees who acquired their leases at a discount due to short
16 remaining lease terms.



1 The purpose of this Act is to authorize the board of land
2 and natural resources to extend commercial, industrial, resort,
3 mixed-use, or governmental leases, other than those to which the
4 University of Hawaii is a party, that have not been sold or
5 assigned within the last ten years, for lessees who commit to
6 substantial improvement to the existing improvements.

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

10 "§171- Commercial, industrial, resort, mixed-use, or
11 government leases; extension of term. (a) Notwithstanding
12 section 171-36, for leases that have not been assigned or
13 transferred within ten years prior to receipt of an application
14 for a lease extension submitted pursuant to this section, the
15 board may extend the rental period of a lease of public lands
16 for commercial use, industrial use, resort use, mixed-use, or
17 government use upon the board's approval of a development
18 agreement proposed by the lessee or by the lessee and developer
19 to make substantial improvements to the existing improvements.
20 For the purposes of this subsection, the terms "assigned or
21 transferred", shall not include:



- 1 (1) A sale or change in ownership of a lessee that is a
2 company or entity; or
- 3 (2) A collateral assignment of lease or other security
4 granted to a leasehold mortgagee in connection with
5 leasehold financing by a lessee.
- 6 (b) Prior to entering into a development agreement, the
7 lessee or the lessee and the developer shall submit to the board
8 the plans and specifications for the total development proposed.
9 The board shall review the plans and specifications and
10 determine:
- 11 (1) Whether the development proposed in the development
12 agreement is of sufficient worth and value to justify
13 the extension of the lease;
- 14 (2) The estimated period of time to complete the
15 improvements and expected date of completion of the
16 improvements; and
- 17 (3) The minimum revised annual rent based on the fair
18 market value of the lands to be developed, as
19 determined by an appraiser for the board and, if
20 deemed appropriate by an appraiser, the appropriate



1 percentage of rent where gross receipts exceed a
2 specified amount.

3 No lease extension shall be approved until the board and the
4 lessee or the lessee and developer mutually agree to the terms
5 and conditions of the development agreement.

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

10 (d) Any extension of a lease pursuant to this section
11 shall be based upon the substantial improvements to be made and
12 shall be for a period not longer than forty years. No lease
13 shall be transferable or assignable throughout the first ten
14 years of the extended term, except by devise, bequest, intestate
15 succession, a collateral assignment of lease or other security
16 granted to a leasehold mortgagee in connection with leasehold
17 financing by a lessee, a change in direct ownership of less than
18 fifty per cent of a lessee that is a company or entity, a change
19 in indirect ownership of a lessee that is a company or entity,
20 or by operation of law. The prohibition on assignments and
21 transfer of leases shall include a prohibition on conveyances of



1 leases. During subsequent periods of the extended term of the
2 lease, the lease may be assigned or transferred, subject to
3 approval by the board.

4 (e) The applicant for a lease extension shall pay all
5 costs and expenses incurred by the department in connection with
6 processing, analyzing, or negotiating any lease extension
7 request, lease document, or development agreement under this
8 section.

9 (f) As used in this section:

10 "Government use" means a development undertaken under a
11 lease held by any agency or department of the State or its
12 political subdivisions other than the University of Hawaii or
13 any department, agency, or administratively attached entity of
14 the University of Hawaii system.

15 "Mixed use" means a development that combines two or more
16 of the following uses in a single project: commercial use,
17 resort use, multifamily residential use, or governmental use.

18 "Resort use" means a development that provides transient
19 accommodations as defined in section 237D-1 and related
20 services, which may include a front desk, housekeeping, food and
21 beverage, room service, and other services customarily



1 associated with transient accommodations; provided that no
2 development shall qualify as a resort use under this section
3 unless at least seventy-five per cent of the living or sleeping
4 quarters in the development are used solely for transient
5 accommodations for the term of any lease extension.

6 "Substantial improvements" means any renovation,
7 rehabilitation, reconstruction, or construction of existing
8 improvements, including minimum requirements for off-site and
9 on-site improvements, the cost of which equals or exceeds thirty
10 per cent of the market value of the existing improvements, that
11 the lessee or the lessee and developer installs, constructs, and
12 completes by the date of completion of the total development."

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Public Lands; Lease Extension; Development Agreement

Description:

Authorizes the board of land and natural resources to extend certain leases of public lands for commercial, industrial, resort, mixed-use, or government use upon approval of a proposed development agreement to make substantial improvements to the existing improvements. (SD1)

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