

ACT 219

S.B. NO. 1530

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that many of the leases for hotel and resort properties on state land, such as in the Banyan Drive area in Hilo, Hawaii, are nearing the end of the lease term. Faced with the uncertainty of continued tenancy, lessees have little incentive to make major investments in infrastructural improvements and to ensure the long-term maintenance of the facilities. As a result, the infrastructure on these properties has been deteriorating.

Act 55, Session Laws of Hawaii 2000, attempted to address the problem of deteriorating hotel and resort infrastructure in east Hawaii on the island of Hawaii by authorizing the board of land and natural resources to issue new leases to the existing lessees in the Banyan Drive area. However, this Act was later found to be unconstitutional under article XI, section 5, of the Hawaii State Constitution.

The legislature finds that business lessees typically sell or assign their leases that are nearing the end of the lease terms at a discount, and believes that it would be unfair to the prior assignors of the leases if the State granted extensions of leases that previously could not be extended under existing law or lease terms to the newly-assigned lessees who acquired their leases at a discount due to short remaining lease terms.

The purpose of this Act is to authorize the board of land and natural resources to extend hotel or resort leases that have not been sold or assigned within the last five years, for lessees who commit to substantial improvement to the existing improvements.

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

“§171- Hotel or resort leases; extension of term. (a) Notwithstanding section 171-36, the board may extend the rental period of a lease of public lands for hotel or resort use upon the approval by the board of a development agreement proposed by the lessee or by the lessee and developer to make substantial improvements to the existing improvements.

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

- (1) Whether the development proposed in the development agreement is of sufficient worth and value to justify the extension of the lease;
- (2) The estimated period of time to complete the improvements and expected date of completion of the improvements; and
- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the board, and the percentage of rent where gross receipts exceed a specified amount.

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

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

(d) Any extension of a lease pursuant to this section shall be based upon the substantial improvements to be made and shall be for a period not longer than fifty-five years.

(e) Any extension of a lease granted pursuant to this section shall be effectuated, documented, and executed using the most current lease form and leasing practices and policies of the board. The intent of this subsection is to ensure that an extended lease, like the issuance of a new lease, will be subject to the most current leasing practices and policies of the board, which shall be incorporated into the lease document.

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

(g) As used in this section, “substantial improvements” means any renovation, rehabilitation, reconstruction, or construction of the existing improvements, including minimum requirements for off-site and on-site improvements, the cost of which equals or exceeds fifty per cent of the market value of the existing improvements that the lessee or the lessee and developer install, construct, and complete by the date of completion of the total development.

(h) As used in this section, “hotel or resort” means a development that provides transient accommodations as defined in section 237D-1 and related services, which may include a front desk, housekeeping, food and beverage, room service, and other services customarily associated with transient accommodations; provided that no development shall qualify as a hotel or resort under this section unless at least seventy-five per cent of the living or sleeping quarters in the development are used solely for transient accommodations for the term of any lease extension.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2011; provided that this Act shall be repealed on December 31, 2015.

(Approved July 11, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.