

ACT 236

H.B. NO. 499

A Bill for an Act Relating to Lease Extensions on Public Land.

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

SECTION 1. The legislature finds that many of the leases for commercial, industrial, resort, mixed-use, and government properties on public land

statewide may be 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 ensure the long-term maintenance of the facilities. As a result, the infrastructure on these properties has been deteriorating.

The legislature finds that business lessees typically sell or assign their leases that are nearing the end of the lease terms at a discount. The legislature further finds 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 commercial, industrial, resort, mixed-use, or government leases, other than those to which the University of Hawaii is a party, that have not been sold or assigned within the last ten 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 part II to be appropriately designated and to read as follows:

“§171- Commercial, industrial, resort, mixed-use, or government leases; extension of term. (a) Notwithstanding section 171-36, for leases that have not been assigned or transferred within ten years prior to receipt of an application for a lease extension submitted pursuant to this section, the board may extend the rental period of a lease of public lands for commercial use, industrial use, resort use, mixed-use, or government use upon the board’s approval of a development agreement proposed by the lessee or by the lessee and developer to make substantial improvements to the existing improvements. For the purposes of this subsection, “assigned or transferred” shall not include:

- (1) A sale or change in ownership of a lessee that is a company or entity; or
 - (2) A collateral assignment of lease or other security granted to a leasehold mortgagee in connection with leasehold financing by a lessee.
- (b) Before 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 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 necessary 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, if deemed appropriate by an appraiser, the appropriate 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 no longer than forty years. No lease shall be transferable or assignable throughout the first

ten years of the extended term, except by devise, bequest, intestate succession, a collateral assignment of lease or other security granted to a leasehold mortgagee in connection with leasehold financing by a lessee, a change in direct ownership of less than fifty per cent of a lessee that is a company or entity, a change in indirect ownership of a lessee that is a company or entity, or by operation of law. The prohibition on assignments and transfer of leases shall include a prohibition on conveyances of leases. During subsequent periods of the extended term of the lease, the lease may be assigned or transferred, subject to approval by the board.

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

(f) As used in this section:

“Government use” means a development undertaken under a lease held by any agency or department of the State or its political subdivisions other than the University of Hawaii or any department, agency, or administratively attached entity of the University of Hawaii system.

“Mixed-use” means a development that combines two or more of the following uses in a single project: commercial use, resort use, multifamily residential use, or government use.

“Resort use” means a development that:

- (1) 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; and
- (2) Where at least seventy-five per cent of the living or sleeping quarters are used solely for transient accommodations for the term of any lease extension.

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

SECTION 3. New statutory material is underscored.¹

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

(Became law on July 6, 2021, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.