A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1   SECTION 1. The legislature finds that certain elements of

2 inequity exist in the relationship of fee simple owners of

3 commercial and industrial properties and holders of long-term

4 leasehold interest in those properties who undertake the leases

5 for the purpose of developing, improving, operating, and

6 subletting the properties. These inequities accrue to the

7 detriment of Hawaii's business and economic development and harm

8 Hawaii's working and retired taxpayers. Uncomplicated and fair

9 legislative remedies exist that can obviate these inequities.

10   The purpose of this Act is to implement certain conditions

11 governing long-term leases of commercial and industrial

12 properties.

13   SECTION 2. Chapter 519, Hawaii Revised Statutes, is

14 amended by adding a new section to be appropriately designated

15 and to read as follows:

16   "§519-   **Leases of commercial and industrial property.**

17 (a) Notwithstanding any other law to the contrary, any lease of

18 commercial or industrial leasehold property where the lessor is

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1   the owner, directly or indirectly, of fifty thousand square feet

2   or more of commercial or industrial leasehold property in the

3   State shall be subject to the following terms and conditions:

4   (1)   Whenever a lease condition requires that a lessee

5   obtain the approval of the lessor for the assignment,

6   transfer, or encumbrance of the leasehold property,

7   the approval of the lessor may not be unreasonably

8   withheld;

9   (2)   Where a lessee is required by a lease with less than

10   thirty years remaining on its term to make major and

11   substantial improvements to any structures on the

12   leasehold property or to any infrastructure supporting

13   the leasehold property, the lessee:

14   (A)   Shall not be required to make substantial new

15   improvements to infrastructure or structures; and

16   (B)   Shall be limited to making reasonable maintenance

17   and repair work to satisfy federal, state, and

18   county laws, ordinances, and code requirements to

19   ensure the public's health, safety, and welfare;

20   (3)   Where a lease provides for the reversion of any

21   improvements on the leasehold property at the

22   termination of the lease, the improvements shall be

1   returned subject to reasonable wear and tear that may

2   have resulted from the use of the improvements over

3   the full term of the lease;

4   (4) Where a lease provides for periodic step-ups in lease

5   rent over the term of the lease, the increases in

6   lease rent shall be determined, in part, on a

7   determination of the financial feasibility of the rent

8   increase in relation to the current use of the

9   leasehold property; and

10 (5) In the event that a lessor determines to sell the

11   leasehold interest and all improvements on the

12   leasehold property to the lessee, the lessor shall be

13   entitled to exclude from state income taxes in the

14   year of the sale any gain the lessor realizes from the

15   sale.

16 (b) For purposes of this section, "commercial or

17 industrial leasehold property" means any real property:

18 (1) Situated in the State;

19 (2) Zoned by a county for commercial, industrial, or mixed

20   use; and

21 (3) That is subject to a lease with an unexpired term of

22   twenty years or more."

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1   SECTION 3. This Act does not affect rights and duties that

2 matured, penalties that were incurred, and proceedings that were

3 begun, before its effective date.

4   SECTION 4. New statutory material is underscored.

5   SECTION 5. This Act shall take effect on July 1, 2009.

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Report Title:
Real Property Leases

Description:
Mandates conditions applicable to certain commercial and
industrial leases.