

JAN 27 2010

S.B. NO. 2862

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# 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



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;

10          (5) If a lessor determines to sell the leasehold interest  
11          and all improvements on the leasehold property to the  
12          lessee, the lessor shall be entitled to exclude from  
13          state income taxes in the year of the sale any gain  
14          the lessor realizes from the sale; and

15          (6) If the lessee and the lessor are unable to mutually  
16          agree to extend the lease to the satisfaction of both  
17          parties, the lessor shall be assessed a surcharge of  
18          one hundred per cent of the tax assessed valuation of  
19          any improvements at the time of surrender. Any  
20          surcharge received under this section shall be  
21          deposited into the state general fund.



1        (b) For purposes of this section, "commercial or  
2 industrial leasehold property" means any real property:

3        (1) Situated in the State;

4        (2) Zoned by a county for commercial, industrial, or mixed  
5 use; and

6        (3) That is subject to a lease with an unexpired term of  
7 twenty years or more."

8        SECTION 3. This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun before its effective date.

11        SECTION 4. New statutory material is underscored.

12        SECTION 5. This Act shall take effect on July 1, 2010.

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INTRODUCED BY: *Francine Brown Cleveland*

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**Report Title:**

Real Property Leases

**Description:**

Mandates conditions applicable to certain commercial and industrial leases.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

