

JAN 21 2011

---

---

# 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 inequities  
2 exist in the relationship between fee simple owners of  
3 commercial and industrial real properties and holders of long-  
4 term leasehold interest in those real properties who undertake  
5 the leases for the purpose of developing, improving, operating,  
6 and 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 real  
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 real  
17 property. (a) Notwithstanding any other law to the contrary,  
18 any lease of commercial or industrial leasehold property where



1 the lessor is the owner, directly or indirectly, of fifty  
2 thousand square feet or more of commercial or industrial  
3 leasehold property in the State shall be subject to the  
4 following terms and conditions:

5 (1) Where a lease condition requires that a lessee obtain  
6 the approval of the lessor for the assignment,  
7 transfer, or encumbrance of the leasehold property,  
8 the approval of the lessor shall not be unreasonably  
9 withheld;

10 (2) Where a lessee is required by a lease with less than  
11 thirty years remaining on its term to make major and  
12 substantial improvements to any structures on the  
13 leasehold property or to any infrastructure supporting  
14 the leasehold property, the lessee:

15 (A) Shall not be required to make substantial new  
16 improvements to infrastructure or structures; and

17 (B) Shall be limited to making reasonable maintenance  
18 and repair work to satisfy federal, state, and  
19 county laws, ordinances, and code requirements to  
20 ensure the public's health, safety, and welfare;

21 (3) Where a lease provides for the reversion of any  
22 improvements on the leasehold property at the



1 termination of the lease, the improvements shall be  
2 returned subject to reasonable wear and tear that may  
3 have resulted from the use of the improvements over  
4 the full term of the lease;

5 (4) Where a lease provides for periodic resets, increases,  
6 or step-ups in lease rent over the term of the lease,  
7 the increases in lease rent shall be determined, in  
8 part, on a determination of the financial feasibility  
9 of the rent increase in relation to the current use of  
10 the leasehold property; and

11 (5) In the event that a lessor sells the leasehold  
12 interest and all improvements on the leasehold  
13 property to the lessee, the lessor shall be entitled  
14 to exclude from state income taxes in the year of the  
15 sale any gain the lessor realizes from the 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."



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, 2011.

6

INTRODUCED BY: *Therese Crum Oakland*



**Report Title:**

Real Property Leases

**Description:**

Mandates conditions applicable to commercial and industrial leases where the lessor owns fifty thousand square feet or more of commercial or industrial leasehold property in the State.

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

