

---

# A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

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

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

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

16           The legislature finds that business lessees typically sell  
17 or assign their leases that are nearing the end of the lease  
18 terms at a discount, and believes that it would be unfair to the



1 prior assignors of the leases if the State were to grant  
2 extensions of leases that previously could not be extended under  
3 existing law or lease terms to the newly assigned lessees who  
4 acquired their leases at a discount due to short remaining lease  
5 terms.

6 The purpose of this Act is to authorize the board of land  
7 and natural resources to authorize the extension of hotel and  
8 resort leases that have not been sold or assigned within the  
9 last five years, for lessees who commit to substantial  
10 improvement to the leased premises.

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

14 "§171- Hotel and resort leases; extension of term. (a)  
15 Notwithstanding section 171-36, the board may extend the rental  
16 period of a lease of public lands for hotel or resort use upon  
17 the approval by the board of a development agreement proposed by  
18 the lessee or by the lessee and developer to make substantial  
19 improvements to the demised premises.

20 (b) Prior to entering into a development agreement, the  
21 lessee or the lessee and developer shall submit to the board the  
22 plans and specifications for the total development being



1 proposed. The board shall review the plans and specifications  
2 and determine:

3 (1) Whether the development proposed in the development  
4 agreement is of sufficient worth and value to justify  
5 the extension of the lease;

6 (2) The estimated period of time to complete the  
7 improvements and expected date of completion of the  
8 improvements; and

9 (3) The minimum revised annual rent based on the fair  
10 market value of the lands to be developed, as  
11 determined by an appraiser for the board, and  
12 percentage rent where gross receipts exceed a  
13 specified amount.

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

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



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

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

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

16       (g) As used in this section "substantial improvements"  
17 means any renovation, rehabilitation, reconstruction, or  
18 construction of the demised premises, including minimum  
19 requirements for off-site and on-site improvements, the cost of  
20 which equals or exceeds fifty per cent of the market value of  
21 the demised premises; provided that the lessee or the lessee and  
22 developer installs, constructs, and completes the renovation,



1 rehabilitation, reconstruction, or construction by the date of  
2 completion of the total development."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act shall take effect on July 1, 2050;

5 provided that this Act shall be repealed on December 31, 2015.



**Report Title:**

BLNR; Public Lands; Lease Extension; Development Agreement

**Description:**

Authorizes BLNR to extend leases of public lands for hotel and resort use upon approval of a proposed development agreement to make substantial improvements to the premises. Effective July 1, 2050. (SB1530 HD1)

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

