
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 in the Banyan
3 Drive area in Hilo, Hawaii are nearing the end of the lease
4 term. Faced with the uncertainty of continued tenancy, lessees
5 have little incentive to make major investments in improvements
6 to their infrastructure and ensure the long-term maintenance of
7 their facilities. As a result, the infrastructure on these
8 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 resort area. However, this Act was
14 later found to be unconstitutional under article XI, section 5,
15 of the Hawaii State Constitution.

16 The legislature finds that improvements to hotel and resort
17 infrastructure in the Banyan Drive area are important to the
18 growth and expansion of Hawaii businesses and the enhancement of



1 Hawaii's visitor infrastructure, which is particularly timely
2 given the need to accommodate the anticipated influx of visitors
3 to east Hawaii due to direct mainland flights that will start in
4 the summer of 2011.

5 The legislature finds that business lessees typically sell
6 or assign their leases that are nearing the end of the lease
7 terms at a discount, and believes that it would be unfair to the
8 prior assignors of the leases if the State were to grant
9 extensions of leases that previously could not be extended under
10 existing law or lease terms to the newly assigned lessees who
11 acquired their leases at a discount due to short remaining lease
12 terms.

13 The purpose of this Act is to authorize the board of land
14 and natural resources to authorize the extension of hotel and
15 resort leases in the Banyan Drive area that have not been sold
16 or assigned within the last five years, for lessees who commit
17 to substantial improvement to the leased premises.

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

21 "§171- Hotel and resort leases; extension of term. (a)

22 Notwithstanding section 171-36, the board may extend the rental



1 period of a lease of public lands for hotel or resort use upon
2 the approval by the board of a development agreement proposed by
3 the lessee or lessee and developer to make substantial
4 improvements to the demised premises.

5 (b) Prior to entering into a development agreement, the
6 lessee or lessee and developer shall submit to the board the
7 plans and specifications for the total development being
8 proposed. The board shall review the plans and specifications
9 and determine:

10 (1) Whether the development proposed in the development
11 agreement is of sufficient worth and value to justify
12 the extension of the lease;

13 (2) The estimated period of time to complete the
14 improvements and expected date of completion of the
15 improvements; and

16 (3) The minimum revised annual rent based on the fair
17 market value of the lands to be developed, as
18 determined by an appraiser for the board, and
19 percentage rent where gross receipts exceed a
20 specified amount.



1 No lease extension shall be approved until the board and the
2 lessee or lessee and developer mutually agree to the terms and
3 conditions of the development agreement.

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

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

11 (e) Any extension of a lease granted pursuant to this
12 section shall be effectuated, documented, and executed using the
13 most current lease form and leasing practices and policies of
14 the board. The intent of this subsection is to assure that an
15 extended lease, like the issuance of a new lease, will be
16 subject to the most current leasing practices and policies of
17 the board which shall be incorporated into the lease document.

18 (f) The applicant for a lease extension shall pay all
19 costs and expenses incurred by the department in connection with
20 the processing, analyzing, and negotiating of any lease
21 extension request and document, and the development agreement
22 under subsections (a) and (b).



1 (g) As used in this section "substantial improvements"
2 means any renovation, rehabilitation, reconstruction, or
3 construction of the demised premises, including minimum
4 requirements for off-site and on-site improvements, the cost of
5 which equals or exceeds fifty per cent of the market value of
6 the demised premises; provided that the lessee or lessee and
7 developer installs, constructs, and completes the renovation,
8 rehabilitation, reconstruction, or construction by the date of
9 completion of the total development.

10 (h) As used in this section, "hotel or resort" means a
11 development that provides transient accommodations as defined in
12 section 237D-1 and related services such as a front desk,
13 housekeeping, food and beverage, room service, and other
14 services customarily associated with transient accommodations;
15 provided that no development shall qualify as a hotel or resort
16 under this section unless at least seventy-five per cent of the
17 living or sleeping quarters in the development are used solely
18 for transient accommodations for the term of any lease
19 extension."

20 SECTION 3. New statutory material is underscored.

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1 SECTION 4. This Act shall take effect on July 1, 2050;
2 provided that this Act shall be repealed on December 31, 2015.
3



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 7/1/2050. (SD1)

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