

JAN 23 2020

A BILL FOR AN ACT

RELATING TO LEASE EXTENSIONS ON PUBLIC LAND.

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

1 SECTION 1. The legislature finds that many of the leases
2 for commercial, industrial, resort, and government properties on
3 public land statewide may be nearing the end of the lease term.
4 Faced with the uncertainty of continued tenancy, lessees have
5 little incentive to make major investments in infrastructural
6 improvements and to ensure the long-term maintenance of the
7 facilities. As a result, the infrastructure on these properties
8 has been deteriorating.

9 The legislature finds that business lessees typically sell
10 or assign their leases that are nearing the end of the lease
11 terms at a discount. The legislature further finds that it
12 would be unfair to the prior assignors of the leases if the
13 State granted extensions of leases that previously could not be
14 extended under existing law or lease terms to the newly assigned
15 lessees who acquired their leases at a discount due to short
16 remaining lease terms.



1 The purpose of this Act is to authorize the board of land
2 and natural resources to extend commercial, industrial, resort,
3 or governmental leases, other than those to which the University
4 of Hawaii is a party, that have not been sold or assigned within
5 the last ten years, for lessees who commit to substantial
6 improvement to the existing improvements.

7 SECTION 2. Chapter 171, Hawaii Revised Statutes, is
8 amended by adding a new section to part II to be appropriately
9 designated and to read as follows:

10 "§171- Commercial, industrial, resort, or government
11 leases; extension of term. (a) Notwithstanding section 171-36,
12 for leases that have not been assigned or transferred within ten
13 years prior to receipt of an application for a lease extension
14 submitted pursuant to this section, the board may extend the
15 rental period of a lease of public lands for commercial use,
16 industrial use, resort use, or government use upon approval by
17 the board of a development agreement proposed by the lessee or
18 by the lessee and developer to make substantial improvements to
19 the existing improvements; provided that this section shall not
20 apply to public lands controlled by the department of Hawaiian
21 home lands and leased pursuant to the Hawaiian Homes Commission



1 Act of 1920, as amended, unless such lease is for commercial
2 use. For the purposes of this paragraph, the terms "assigned or
3 transferred", shall not include:

4 (1) A sale or change in ownership of a lessee that is a
5 company or entity; or

6 (2) A collateral assignment of lease or other security
7 granted to a leasehold mortgagee in connection with
8 leasehold financing by a lessee.

9 (b) Prior to entering into a development agreement, the
10 lessee or the lessee and developer shall submit to the board the
11 plans and specifications for the total development proposed.

12 The board shall review the plans and specifications and
13 determine:

14 (1) Whether the development proposed in the development
15 agreement is of sufficient worth and value to justify
16 the extension of the lease;

17 (2) The estimated period of time to complete the
18 improvements and expected date of completion of the
19 improvements; and

20 (3) The minimum revised annual rent based on the fair
21 market value of the lands to be developed, as



1 determined by an appraiser for the board, and if
2 deemed appropriate by an appraiser, the appropriate
3 percentage of rent where gross receipts exceed a
4 specified amount.

5 No lease extension shall be approved until the board and the
6 lessee or the lessee and developer mutually agree to the terms
7 and conditions of the development agreement.

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

12 (d) Any extension of a lease pursuant to this section
13 shall be based upon the substantial improvements to be made and
14 shall be for a period not longer than forty years. No lease
15 shall be transferable or assignable throughout the first ten
16 years of the extended term, except by devise, bequest, intestate
17 succession, a collateral assignment of lease or other security
18 granted to a leasehold mortgagee in connection with leasehold
19 financing by a lessee, a change in direct ownership of less than
20 fifty per cent of a lessee that is a company or entity, a change
21 in indirect ownership of a lessee that is a company or entity,



1 or by operation of law. The prohibition on assignments and
2 transfer of leases shall include a prohibition on conveyances of
3 leases. During subsequent periods of the extended term of the
4 lease, the lease may be assigned or transferred, subject to
5 approval by the board.

6 (e) The applicant for a lease extension shall pay all
7 costs and expenses incurred by the department in connection with
8 processing, analyzing, or negotiating any lease extension
9 request, lease document, or development agreement under this
10 section.

11 (f) As used in this section:

12 "Government use" means a development undertaken under a
13 lease held by any agency or department of the State or its
14 political subdivisions other than the University of Hawaii or
15 any department, agency, or administratively attached entity of
16 the University of Hawaii system.

17 "Resort use" means a development that provides transient
18 accommodations as defined in section 237D-1 and related
19 services, which may include a front desk, housekeeping, food and
20 beverage, room service, and other services customarily
21 associated with transient accommodations; provided that no



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1 development shall qualify as a resort use under this section
 2 unless at least seventy-five per cent of the living or sleeping
 3 quarters in the development are used solely for transient
 4 accommodations for the term of any lease extension.

5 "Substantial improvements" means any renovation,
 6 rehabilitation, reconstruction, or construction of existing
 7 improvements, including minimum requirements for off-site and
 8 on-site improvements, the cost of which equals or exceeds thirty
 9 per cent of the market value of the existing improvements, that
 10 the lessee or the lessee and developer installs, constructs, and
 11 completes by the date of completion of the total development."

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This Act shall take effect upon its approval
 14 and shall be repealed on June 30, 2025.

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INTRODUCED BY: Francis R. George
Michelle D. Sclafani
Breanne Abate
Kurt Fennelly



S.B. NO. 2807

Report Title:

BLNR; Public Lands; Lease Extension; Development Agreement

Description:

Authorizes the Board of Land and Natural Resources to extend certain leases of public lands for commercial, industrial, resort, or government use upon approval of a proposed development agreement to make substantial improvements to the existing improvements. Sunsets on 6/30/2025.

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

