

JAN 27 2021

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

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

15 The purpose of this Act is to authorize the board of land
16 and natural resources to extend commercial, industrial, or
17 resort leases that have not been sold or assigned within the

1 last twenty years, for lessees who commit to substantial
2 improvement to the existing improvements.

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

6 "§171- Commercial, industrial, or resort leases;
7 extension of term. (a) Notwithstanding section 171-36, for
8 leases that have not been assigned or transferred within twenty
9 years prior to receipt of an application for a lease extension
10 submitted pursuant to this section, the board may extend the
11 rental period of a lease of public lands for commercial,
12 industrial, or resort use upon the approval by the board of a
13 development agreement proposed by the lessee or by the lessee
14 and developer to make substantial improvements to the existing
15 improvements.

16 (b) Prior to entering into a development agreement, the
17 lessee or the lessee and developer shall submit to the board the
18 plans and specifications for the total development being
19 proposed. The board shall review the plans and specifications
20 and determine:

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

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

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

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

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

20 (d) Any extension of a lease pursuant to this section
21 shall be based upon the substantial improvements to be made and
22 shall be for a period not longer than forty years. No lease

1 shall be transferable or assignable throughout the extended
2 term, except by devise, bequest, or intestate succession. The
3 prohibition on assignments and transfer of leases includes a
4 prohibition on conveyances of leases and a prohibition on the
5 sale or change in ownership of a lessee that is a company or
6 entity by more than twenty per cent.

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

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

19 (g) As used in this section, "substantial improvements"
20 means any renovation, rehabilitation, reconstruction, or
21 construction of the existing improvements, including minimum
22 requirements for off-site and on-site improvements, the cost of

1 which equals or exceeds fifty per cent of the market value of
2 the existing improvements that the lessee or the lessee and
3 developer installs, constructs, and completes by the date of
4 completion of the total development.

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

14 SECTION 3. New statutory material is underscored.

15 SECTION 4. This Act, upon its approval, shall take effect
16 on July 1, 2021; provided that this Act shall be repealed on
17 June 30, 2026.

18
19 INTRODUCED BY: 

20 BY REQUEST

Report Title:

Board of Land and Natural Resources; Public Lands; Lease
Extension; Development Agreement

Description:

Authorizes the Board of Land and Natural Resources to extend
leases of public lands for commercial, industrial, or resort
use upon approval of a proposed development agreement to make
substantial improvements to the existing improvements.
Repeals on June 30, 2026.

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

SB. NO 1167

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO LEASE
EXTENSIONS ON PUBLIC LAND.

PURPOSE: To authorize the Board of Land and Natural Resources (Board) to extend leases of public lands for commercial, industrial, or resort use upon approval of a proposed development agreement to make substantial improvements to the existing improvements.

MEANS: Add a new section to part II of chapter 171, Hawaii Revised Statutes.

JUSTIFICATION: Many of the leases for commercial, industrial, and resort properties on public land statewide may be nearing the end of the lease term. Faced with the uncertainty of continued tenancy, lessees have little incentive to make major investments in infrastructural improvements and to ensure the long-term maintenance of the facilities. As a result, the improvements and infrastructure on these properties have been deteriorating. At the same time, business lessees typically sell or assign leases that are nearing the end of the lease term at a discount. In such a case, it would be unfair to the assignor if, after the assignment of a lease, the State were to grant an extension of a lease that previously could not be extended, thereby creating a windfall in value for the new assignee.

Act 149, Session Laws of Hawaii (SLH) 2018, authorized the extension of commercial, industrial, and resort leases of public lands located in the Hilo community economic district. Some concern was raised about this measure constituting special legislation as a result of the geographical limitation of its applicability.

This bill would authorize the Board, on a "statewide basis", and for a limited period (to be repealed on June 30, 2024), to extend commercial, industrial, or resort leases that have not been sold or assigned within 20 years prior to receipt of an application for a lease extension under the measure, when the lessee commits to substantial improvement to the existing improvements, provided that lease extensions cannot exceed 40 years, and additionally, the lessee cannot transfer or sell the lease during the extension period, except by devise, bequest, or intestate succession.

This bill is part of an effort by the Department to bring its leasing practices to current commercial standards.¹ If the bill does not pass, leases near the end of their terms outside of the Hilo community economic district will expire in due course and new leases of the properties will be offered for sale at public auction. Existing lessees who are not the successful bidders at auction will have to relocate their businesses.

Impact on the public: Would provide lessees of the Department, for a limited time, an opportunity to extend their leases, under certain conditions, for a period not longer than 40 years.

Impact on the department and other agencies: When leases expire, the lessees' improvements on the land revert to state ownership pursuant to the express terms of the lease, unless the State directs the lessee to remove the improvements. Assuming the improvements have some remaining useful life at the end of the lease, the State is then in a position to sell leases of improved properties at auction at

¹ In addition to the proposed statutory changes, the Department retained a real estate consultant to review our lease forms and ancillary documents and provide recommendations to conform with current commercially reasonable leasing practices.

potentially greater rents than the State would receive for a ground lease alone, which amounts can in turn be applied to public purposes. As a result, one economic impact of the bill is the potential for lost revenue the State will not be able to earn from leasehold improvements that would revert to state ownership if the leases were allowed to expire. On the other hand, in some cases the leasehold improvements may be in such poor condition that the Board would require their demolition prior to the expiration of the lease. It is difficult to assign a dollar value to the economic impact without procuring engineers to assess the integrity of existing structures and appraisers to determine the fair market rental value of leasehold improvements on all the affected leases, which would be a cost-prohibitive undertaking.

A separate economic impact is to lessees of commercial, industrial, or resort lands who would be able to secure lease extensions under the bill and thereby plan for the continuation of their business operations. By way of Act 149, SLH 2018, the Legislature has already determined that the economic impact of impending lease expirations in the Hilo community economic district warranted the implementation of lease extension legislation. The Department believes that lessees of commercial, industrial, or resort lands statewide are similarly situated and that lease extensions should not be limited to one region of the State.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LNR 101.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2021, provided that the Act shall be repealed on June 30, 2026.