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# 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, mixed-use, and government  
3 properties on public land statewide may be nearing the end of  
4 the lease term. Faced with the uncertainty of continued  
5 tenancy, lessees have little incentive to make major investments  
6 in infrastructural improvements and ensure the long-term  
7 maintenance of the facilities. As a result, the infrastructure  
8 on these properties 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 mixed-use, or government leases, other than those to which the  
4 University of Hawaii is a party, that have not been sold or  
5 assigned within the last ten years, for lessees who commit to  
6 substantial 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, mixed-use, or  
11 government leases; extension of term. (a) Notwithstanding  
12 section 171-36, for leases that have not been assigned or  
13 transferred within ten years prior to receipt of an application  
14 for a lease extension submitted pursuant to this section, the  
15 board may extend the rental period of a lease of public lands  
16 for commercial use, industrial use, resort use, mixed-use, or  
17 government use upon the board's approval of a development  
18 agreement proposed by the lessee or by the lessee and developer  
19 to make substantial improvements to the existing improvements.  
20 For the purposes of this subsection, "assigned or transferred"  
21 shall not include:



- 1        (1) A sale or change in ownership of a lessee that is a  
2                    company or entity; or
- 3        (2) A collateral assignment of lease or other security  
4                    granted to a leasehold mortgagee in connection with  
5                    leasehold financing by a lessee.
- 6        (b) Prior to entering into a development agreement, the  
7        lessee or the lessee and developer shall submit to the board the  
8        plans and specifications for the total development proposed.  
9        The board shall review the plans and specifications and  
10       determine:
- 11       (1) Whether the development proposed in the development  
12                    agreement is of sufficient worth and value to justify  
13                    the extension of the lease;
- 14       (2) The estimated period of time to complete the  
15                    improvements and expected date of completion of the  
16                    improvements; and
- 17       (3) The minimum revised annual rent based on the fair  
18                    market value of the lands to be developed, as  
19                    determined by an appraiser for the board and, if  
20                    deemed appropriate by an appraiser, the appropriate



1 percentage of rent where gross receipts exceed a  
2 specified amount.

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

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

10 (d) Any extension of a lease pursuant to this section  
11 shall be based upon the substantial improvements to be made and  
12 shall be for a period no longer than forty years. No lease  
13 shall be transferable or assignable throughout the first ten  
14 years of the extended term, except by devise, bequest, intestate  
15 succession, a collateral assignment of lease or other security  
16 granted to a leasehold mortgagee in connection with leasehold  
17 financing by a lessee, a change in direct ownership of less than  
18 fifty per cent of a lessee that is a company or entity, a change  
19 in indirect ownership of a lessee that is a company or entity,  
20 or by operation of law. The prohibition on assignments and  
21 transfer of leases shall include a prohibition on conveyances of



1 leases. During subsequent periods of the extended term of the  
2 lease, the lease may be assigned or transferred, subject to  
3 approval by the board.

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

9 (f) As used in this section:

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

15 "Mixed-use" means a development that combines two or more  
16 of the following uses in a single project: commercial use,  
17 resort use, multifamily residential use, or government use.

18 "Resort use" means a development that provides transient  
19 accommodations as defined in section 237D-1 and related  
20 services, which may include a front desk, housekeeping, food and  
21 beverage, room service, and other services customarily



1 associated with transient accommodations; provided that no  
2 development shall qualify as a resort use under this section  
3 unless at least seventy-five per cent of the living or sleeping  
4 quarters in the development are used solely for transient  
5 accommodations for the term of any lease extension.

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

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.



**Report Title:**

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, mixed-use, or government use upon approval of a proposed development agreement to make substantial improvements to the existing improvements. (SD1)

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

