A BILL FOR AN ACT

RELATING TO LEASE EXTENSIONS ON PUBLIC LAND.

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

SECTION 1. The legislature finds that many of the leases for commercial, industrial, resort, and government 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 infrastructure on these properties has been deteriorating.

The legislature finds that business lessees typically sell or assign their leases that are nearing the end of the lease terms at a discount. The legislature further finds that it would be unfair to the prior assignors of the leases if the State granted extensions of leases that previously could not be extended under existing law or lease terms to the newly assigned lessees who acquired their leases at a discount due to short remaining lease terms.
The purpose of this Act is to authorize the board of land and natural resources to extend commercial, industrial, resort, or governmental leases, other than those to which the University of Hawaii is a party, that have not been sold or assigned within the last ten years, for lessees who commit to substantial improvement to the existing improvements.

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

"§171- Commercial, industrial, resort, or government leases; extension of term. (a) Notwithstanding section 171-36, for leases that have not been assigned or transferred within ten years prior to receipt of an application for a lease extension submitted pursuant to this section, the board may extend the rental period of a lease of public lands for commercial use, industrial use, resort use, or government use upon approval by the board of a development agreement proposed by the lessee or by the lessee and developer to make substantial improvements to the existing improvements; provided that this section shall not apply to public lands controlled by the department of Hawaiian home lands and leased pursuant to the Hawaiian Homes Commission
Act of 1920, as amended, unless such lease is for commercial
use. For the purposes of this paragraph, the terms "assigned or
transferred", shall not include:

(1) A sale or change in ownership of a lessee that is a
   company or entity; or
(2) A collateral assignment of lease or other security
   granted to a leasehold mortgagee in connection with
   leasehold financing by a lessee.

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

(1) Whether the development proposed in the development
   agreement is of sufficient worth and value to justify
   the extension of the lease;
(2) The estimated period of time to complete the
   improvements and expected date of completion of the
   improvements; and
(3) The minimum revised annual rent based on the fair
   market value of the lands to be developed, as
determined by an appraiser for the board, and if
deemed appropriate by an appraiser, the appropriate
percentage of rent where gross receipts exceed a
specified amount.

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

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

(d) Any extension of a lease pursuant to this section
shall be based upon the substantial improvements to be made and
shall be for a period not longer than forty years. No lease
shall be transferable or assignable throughout the first ten
years of the extended term, except by devise, bequest, intestate
succession, a collateral assignment of lease or other security
granted to a leasehold mortgagee in connection with leasehold
financing by a lessee, a change in direct ownership of less than
fifty per cent of a lessee that is a company or entity, a change
in indirect ownership of a lessee that is a company or entity,
or by operation of law. The prohibition on assignments and
transfer of leases shall include a prohibition on conveyances of
leases. During subsequent periods of the extended term of the
lease, the lease may be assigned or transferred, subject to
approval by the board.
(e) The applicant for a lease extension shall pay all
costs and expenses incurred by the department in connection with
processing, analyzing, or negotiating any lease extension
request, lease document, or development agreement under this
section.
(f) As used in this section:
"Government use" means a development undertaken under a
lease held by any agency or department of the State or its
political subdivisions other than the University of Hawaii or
any department, agency, or administratively attached entity of
the University of Hawaii system.
"Resort use" means a development that provides transient
accommodations as defined in section 237D-1 and related
services, which may include a front desk, housekeeping, food and
beverage, room service, and other services customarily
associated with transient accommodations; provided that no
development shall qualify as a resort use under this section unless at least seventy-five per cent of the living or sleeping quarters in the development are used solely for transient accommodations for the term of any lease extension.

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

SECTION 3. New statutory material is underscored.

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

INTRODUCED BY:  

JAN 2 1 2020
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.

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