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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 and industrial properties on public land  
3 statewide may be nearing the end of the lease term. Faced with  
4 the uncertainty of continued tenancy, lessees have little  
5 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, and believes that it would be unfair to the  
12 prior assignors of the leases if the State granted extensions of  
13 leases that previously could not be extended under existing law  
14 or lease terms to the newly assigned lessees who acquired their  
15 leases at a discount due to short remaining lease terms.

16           The purpose of this Act is to authorize the board of land  
17 and natural resources to extend commercial or industrial leases



1 that will expire within            years, for lessees who commit to  
2 making substantial improvements to the existing improvements.

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

6        "§171- Commercial or industrial leases; extension of  
7 term. (a) Notwithstanding section 171-36, for commercial or  
8 industrial leases that are subject to the management,  
9 administration, or control of the board and will expire within  
10 \_\_\_\_\_ years of receipt of an application for a lease extension  
11 submitted pursuant to this section, the board may extend the  
12 rental period or the term of the lease upon approval by the  
13 board of a development agreement proposed by the lessee or the  
14 lessee and developer to make substantial improvements to the  
15 existing improvements or to construct new substantial  
16 improvements; provided that the length of any extension granted,  
17 in the aggregate, shall not extend the original lease term by  
18 more than forty years.

19        (b) Prior to entering into a development agreement, the  
20 lessee or the lessee and developer shall submit to the board the  
21 plans and specifications for the total development being



1 proposed. The board shall review the plans and specifications  
2 and determine:

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

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

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

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

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



1        (d) An extension of the rental period or term of the lease  
2 shall be based on the economic life of the substantial  
3 improvements as determined by the board or an independent  
4 appraiser; provided that the approval of any extension shall be  
5 subject to the following:

6        (1) The demised premises have been used substantially for  
7 the purpose for which they were originally leased;

8        (2) The length of any extension granted for the rental  
9 period of the lease shall not extend the rental period  
10 of the original lease by more than forty years;

11       (3) The length of any extension granted for the term of  
12 the lease shall not extend the original lease term by  
13 more than forty years;

14       (4) If a reopening occurs, the rental for any ensuing  
15 period shall be the fair market rental as determined  
16 under section 171-17(d) at the time of reopening;

17       (5) Any federal or private lending institution shall be  
18 qualified to do business in the State;

19       (6) Proceeds of any mortgage or loan shall be used solely  
20 for the operations or substantial improvements on the  
21 demised premises;



1       (7) Where substantial improvements are financed by the  
2       lessee, the lessee shall submit receipts of  
3       expenditures within a time period specified by the  
4       board, otherwise the lease extension shall be  
5       canceled; and

6       (8) The rules of the board, setting forth any additional  
7       terms and conditions, which shall ensure and promote  
8       the purposes of the demised lands.

9       (e) The board, from time to time, during the term of any  
10      commercial or industrial lease of public lands within the State,  
11      may modify or eliminate any of the restrictions specified in  
12      section 171-36(a), extend or modify the rental period of the  
13      lease, or extend the term of the lease upon a showing of  
14      significant economic hardship directly caused by:

15      (1) State disaster, pursuant to chapter 209, including  
16      seismic or tidal wave, tsunami, hurricane, volcanic  
17      eruption, typhoon, earthquake, flood, or severe  
18      drought; or

19      (2) A taking of a portion of the area of the lease by  
20      government action by eminent domain, withdrawal, or  
21      conservation easement; provided that the portion taken



1           shall not be less than ten per cent of the entire  
2           leased area unless otherwise approved by the board;  
3           provided that the board determines that the lessee  
4           will not be adequately compensated pursuant to the  
5           lease provisions.

6           (f) The approval of any extension granted pursuant to  
7           subsection (e) shall be subject to the following:

8           (1) The demised premises have been used substantially for  
9           the purposes for which they were originally leased;

10          (2) The rental shall not be less than the rental for the  
11          preceding term;

12          (3) The rules of the board, setting forth any additional  
13          terms and conditions, which shall ensure and promote  
14          the purposes of the demised lands; and

15          (4) The length of the extension shall not exceed a  
16          reasonable length of time for the purpose of providing  
17          relief and shall in no case extend the rental period  
18          of the original lease by more than forty years.

19          (g) Any extension of a lease granted pursuant to this  
20          section shall be effectuated, documented, and executed using the  
21          most current lease form and leasing practices and policies of



1 the board. The intent of this subsection is to ensure that an  
2 extended lease, like the issuance of a new lease, will be  
3 subject to the most current leasing practices and policies of  
4 the board, which shall be incorporated into the lease document.

5 (h) The applicant for a lease extension shall pay all  
6 costs and expenses incurred by the department in connection with  
7 the processing, analyzing, and negotiating of any lease  
8 extension request and document, and the development agreement  
9 under subsections (a) and (b).

10 (i) For purposes of this section, "substantial  
11 improvements" means any renovation, rehabilitation,  
12 reconstruction, or construction of the existing improvements,  
13 including minimum requirements for off-site and on-site  
14 improvements, the cost of which equals or exceeds thirty per  
15 cent of the market value of the existing improvements that the  
16 lessee or the lessee and developer installs, constructs, and  
17 completes by the date of completion of the total development."

18 SECTION 3. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on December 31,  
20 2050, and shall be and repealed on .



**Report Title:**

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

**Description:**

Authorizes the BLNR to extend the rental period or term of leases of public lands for commercial or industrial use upon approval of a proposed development agreement to make substantial improvements to the existing improvements as long as the length of any extension granted does not extend the original lease term by more than 40 years. Establishes causes of economic hardship for which BLNR may modify or eliminate any of the existing statutory restrictions, extend or modify the rental period, or extend the term of these leases and amends the conditions for BLNR's approval of any modification, elimination, or extension. Repeals on . Takes effect 12/31/2050. (SD1)

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