

JAN 22 2007

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# A BILL FOR AN ACT

RELATING TO REAL PROPERTY.

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

1           SECTION 1. The legislature finds that certain elements of  
2 inequity exist in the relationship of fee simple owners of  
3 commercial and industrial properties and holders of long-term  
4 leasehold interest in those properties who undertake the leases  
5 for the purpose of developing, improving, operating, and  
6 subletting the properties. These inequities accrue to the  
7 detriment of Hawaii's business and economic development and harm  
8 Hawaii's working and retired taxpayers. Uncomplicated and fair  
9 legislative remedies exist that can obviate these inequities.

10           The purpose of this Act is to implement certain conditions  
11 governing long-term leases of commercial and industrial  
12 properties.

13           SECTION 2. Chapter 519, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

16           "§519-    Leases of commercial and industrial property.

17           (a) Anything to the contrary notwithstanding, any lease of  
18 commercial or industrial leasehold property where the lessor is



1 the owner, directly or indirectly, of fifty thousand square feet  
2 or more of commercial or industrial leasehold property in the  
3 State shall be subject to the following terms and conditions:

4 (1) Whenever a lease condition requires that a lessee  
5 obtain the approval of the lessor for the assignment,  
6 transfer, or encumbrance of the leasehold property,  
7 the approval of the lessor may not be unreasonably  
8 withheld;

9 (2) Where a lessee is required by a lease with less than  
10 thirty years remaining on its term to make major and  
11 substantial improvements to any structures on the  
12 leasehold property or to any infrastructure supporting  
13 the leasehold property, the requirement to the lessee  
14 shall be limited to making reasonable maintenance and  
15 repair work to satisfy federal, state, and county  
16 laws, ordinances, and code requirements to ensure the  
17 public's health, safety, and welfare, and the lessee  
18 shall not be required to make substantial new  
19 improvements to infrastructure or structures;

20 (3) Where a lease provides for the reversion of any  
21 improvements on the leasehold property at the  
22 termination of the lease, the improvements shall be



1           returned subject to reasonable wear and tear that may  
2           have resulted from the use of the improvements over  
3           the full term of the lease;

4           (4) Where a lease provides for periodic step-ups in lease  
5           rent over the term of the lease, the increases in  
6           lease rent shall be determined, in part, on a  
7           determination of the financial feasibility of the rent  
8           increase in relation to the current use of the  
9           leasehold property; and

10          (5) In the event that a lessor determines to sell the  
11          leasehold interest and all improvements on the  
12          leasehold property to the lessee, the lessor shall be  
13          entitled to exclude from state income taxes in the  
14          year of the sale any gain the lessor realizes from the  
15          sale.

16          (b) For purposes of this section, "commercial or  
17          industrial leasehold property" means any real property:

18           (1) Situated in the State;

19           (2) Zoned by a county for commercial, industrial, or mixed  
20           use; and

21           (3) That subject to a lease with an unexpired term of  
22           twenty years or more."



1 SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun, before its effective date.

4 SECTION 4. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

R. D. Jil.  
by request



**Report Title:**

Real Property Leases

**Description:**

Mandates certain conditions applicable to certain commercial and industrial leases.

