
A BILL FOR AN ACT

RELATING TO LEASEHOLD CONVERSION.

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

1 SECTION 1. Over forty years ago, the legislature found
2 that as the State's economy and population underwent a rapid
3 expansion, the land ownership system in the state was
4 characterized by a concentration of fee title land in the hands
5 of a few large trusts, estates, and other private landowners.
6 Subsequent development to meet the needs of the people of the
7 State resulted in a system wherein the large landowners, for
8 tax, fiduciary, and other reasons, developed a residential and
9 nonresidential leasehold system, rather than developing and
10 selling fee simple interest in land. However, the leasehold
11 system to meet the demand for residential and nonresidential
12 properties resulted to a shortage of fee simple property at
13 reasonable prices in the State's urban areas and deprived the
14 people of the State of a choice to own or to take leases to the
15 lands on which their homes and businesses were situated. This
16 situation, in turn, caused land prices for both leasehold and
17 fee simple properties to become artificially inflated and



1 allowed landowners to include in leases, terms and conditions
2 that were disadvantageous to the lessees.

3 Accordingly, in 1967, the legislature enacted Act 307,
4 Session Laws of Hawaii 1967, that allowed lessees of long-term
5 leasehold interests in single family residential development
6 tracts the right to purchase the fee interest in their
7 residential lots through a condemnation process involving the
8 fee simple landowners and what is now the Hawaii housing finance
9 and development corporation, where the latter would condemn the
10 fee interest, pay the fee owner fair compensation for the fee
11 interest, and in turn, sell the acquired fee interest to the
12 leasehold homeowner.

13 Following the inevitable litigation, the United States
14 Supreme Court and, subsequently, the Hawaii supreme court found
15 that Act 307 did not violate the United States Constitution or
16 the Hawaii Constitution. The result was that over the following
17 years the number of leasehold single family residences fell from
18 a high of approximately twenty-eight thousand to four thousand
19 six hundred, mostly through voluntary conversions by the large
20 landowners and to the benefit of both the landowner and the
21 homeowner.



1 However, the legislature finds that the situation with
2 regard to commercial and industrial leasehold properties remains
3 unchanged, with an inequitable system that has caused artificial
4 inflation of lease rents and the cost of acquiring leasehold
5 properties. The legislature notes that these effects do not
6 only impact the commercial and industrial lessee; in most cases,
7 these artificial costs are passed on to the consumer in the form
8 of higher costs for the purchase of commercial and industrial
9 products and services. Further, as demand for the redevelopment
10 of commercial and, particularly, industrial lands increases,
11 commercial and industrial lessees are being pushed out of the
12 major urban core areas, thereby resulting in inconveniences and
13 rising costs to consumers trying to acquire the lessees'
14 products and services.

15 The purpose of this Act is to establish a program for the
16 mandatory lease-to-fee conversion of business properties in the
17 same manner that the legislature addressed the problem of the
18 residential leasehold system.

19 SECTION 2. The Hawaii Revised Statutes is amended by
20 adding a new chapter to be appropriately designated and to read
21 as follows:

22



1 "CHAPTER

2 BUSINESS LEASEHOLDS

3 § -1 Definitions. As used in this chapter when the
4 context otherwise requires:

5 "Business lot":

6 (1) Means a lot zoned for business, commercial, or
7 industrial use and leased for and actually placed in a
8 business, commercial, or industrial use;

9 (2) Shall not include any lot zoned resort, agriculture,
10 conservation, preservation, apartment, or residential,
11 even if the lot is used for an income generating
12 enterprise; and

13 (3) Includes a lot zoned for mixed use if leased
14 exclusively for and actually placed in business,
15 commercial, or industrial resort use.

16 "Corporation" means the Hawaii housing finance and
17 development corporation created by chapter 201H.

18 "Development tract" means a single contiguous area of real
19 property not less than five acres in size that has been
20 developed and subdivided into business lots, streets, and other
21 common or public areas. Two or more pieces of real property
22 shall be considered as a single contiguous area if they would be



1 contiguous except for the interposition or existence of a
2 street, stream, or other like interference.

3 "Designated business lot" means a business lot, the leased
4 fee interest in which has been designated for acquisition by the
5 corporation.

6 "Fair market value" means that amount of money that a
7 purchaser willing, but not obliged, to buy an interest in land
8 would pay an owner willing, but not obliged, to sell it, taking
9 into consideration all uses to which the land is adapted or
10 might in reason be applied.

11 "Fee simple land" means absolute ownership of land for an
12 indefinite duration, freely transferable and inheritable. For
13 the purposes of this chapter, fee simple land shall be deemed
14 owned by a lessee if the fee simple real property is held under
15 any trust agreement or fiduciary arrangement in which another
16 person holds legal title to the land and where the lessee,
17 whether as trustee, co-trustee, or beneficiary, holds or retains
18 the controlling interest and right to direct the trust with
19 regard to management or control of the trust or its assets.

20 "Fee simple owner" and "fee owner" mean the person who owns
21 the fee simple title to the land that is leased, including a
22 life tenant with a remainder over, vested or contingent, and a



1 holder of a defeasible estate, and the holder's heirs,
2 successors, legal representatives, and assigns.

3 "Lease" means a conveyance of land or an interest in land,
4 by a fee simple owner as lessor, or by a lessee or sublessee as
5 sublessor, to any person, in consideration of a return of rent
6 or other remuneration, for a term of twenty years or more,
7 measured from the initial date of the conveyance and including
8 any period for which the lease may be extended or renewed at the
9 option of the lessee.

10 "Leased fee" and "leased fee interest" means all of the
11 interests of the fee simple owner, lessor, and all legal and
12 equitable owners of the land that is leased other than the
13 lessee's leasehold interest.

14 "Legal and equitable owner" means the fee simple owner and
15 all persons having legal or equitable interests in the fee or in
16 the lessor's leasehold estate, including mortgagees, developers,
17 lienors, and sublessors, and their respective heirs, successors,
18 legal representatives, and assigns.

19 "Lessee" means any person to whom land is leased or
20 subleased and the lessee's heirs, successors, legal
21 representatives, and assigns.



1 "Lessor" means any person who leases or subleases land to
2 another and the lessor's heirs, successors, legal
3 representatives, and assigns.

4 "Lot" means a parcel of land of two acres or less in size.

5 "Offsite improvements" means all physical improvements,
6 including but not limited to roads, sewer lines, sewage
7 treatment plants, gutters, curbs, sidewalks, fire hydrants,
8 street lights, land dedicated for public purposes and
9 underground electric cables, constructed or placed in a
10 subdivision off the lots intended for occupancy, which
11 improvements are to be used in common by occupants of all lots
12 adjoining the improvements or by the occupants of all lots for
13 whose benefit the improvements have been constructed or placed.

14 "Onsite improvements" means all physical improvements
15 placed on a business lot intended for occupancy that are for the
16 benefit of occupants of that lot.

17 "Owner's basis" means the value of the lessor's leased fee
18 interest in the lot that would apply if the interest was
19 normally traded on an open market. The fair market value of the
20 owner's basis shall be established to provide the lessor with
21 just compensation for the lessor's interests in the lot and
22 shall take into consideration every interest and equity of the



1 lessee in establishing that market value. The value may be
2 determined by either of the following methods, or any other
3 method that is normally used by qualified appraisers in
4 establishing the fair market value of a lessor's leased fee
5 interest in land:

6 (1) The sum of:

7 (A) The future rental income stream for the lot for
8 the term of the lease discounted to present worth
9 from the expiration date of the lease; and

10 (B) The value of the lessor's reversionary interest
11 in the lot discounted to present worth from the
12 expiration date of the lease. The discount rate
13 shall be established by the corporation as
14 reasonable and fair to the lessor and lessees;
15 provided that the discount rate may be modified
16 by mutual agreement of the lessor, lessee, and
17 the corporation;

18 or

19 (2) The current fair market value of the lot, valued as if
20 it were a fee simple lot and as if the fee title were
21 unencumbered, and excluding onsite improvements,



1 established by a market data approach using comparable
2 sales, less the following:

- 3 (A) The value of the lease, including any rights
4 therein, if any, that accrues to the lessee;
- 5 (B) That percentage of the general enhancement of the
6 development tract that has been paid for or
7 contributed directly or indirectly by the lessee;
- 8 (C) The current replacement cost of that portion of
9 existing offsite improvements, including overhead
10 and profit at prevailing rates, that were paid
11 for or otherwise contributed, directly or
12 indirectly, by the lessee;
- 13 (D) The percentage of the general enhancement of the
14 development tract and the lot caused by the
15 onsite improvements on the lot paid for, or
16 contributed, directly or indirectly, by the
17 lessee;
- 18 (E) The amount, not otherwise deducted herein,
19 allocated to the lot, that was paid for or
20 otherwise contributed, directly or indirectly by
21 the original lessee, computed at prevailing rates
22 for overhead and profit in developing the



1 development tract established by existing
2 practice in the community; and
3 (F) The amount for fees and costs that would
4 ordinarily be borne by the lessor in transferring
5 the leased fee interest to a lessee, including
6 but not limited to commissions, other costs of
7 sale, and similar fee;
8 provided that the values established by any one of the
9 foregoing shall not be duplicated in any one of the
10 other provisions.

11 § -2 **Applicability.** This chapter applies to all lands
12 leased as business lots that are owned or held privately. This
13 chapter is not intended to supersede or preclude any other
14 remedy at law available to business lot lessees or the State,
15 including those available under chapter 480.

16 § -3 **No estoppel or waiver.** The rights granted to
17 lessees by this chapter shall be effective, notwithstanding any
18 provision in any lease or contract to the contrary. No lessee
19 shall be estopped by any covenant, term, condition, or contract,
20 however worded, from claiming the rights granted to the lessee
21 by this chapter or otherwise be deemed to have waived any



1 rights. Any provision in any lease or contract contrary to the
2 intent or purpose of this chapter is void.

3 **§ -4 Trusts and estates.** The rights granted to lessees
4 by this chapter shall be effective, notwithstanding any
5 condition or provision to the contrary in any instrument
6 creating any life tenancy, defeasible fee, estate, or trust,
7 regardless of whether the tenancy, fee, estate, or trust was in
8 effect prior to July 1, 2009, or is created thereafter. The
9 life tenant, holder, officer, or trustee of any tenancy,
10 defeasible fee, estate, or trust in effect prior to July 1,
11 2009, shall perform all acts required of the life tenant,
12 holder, officer, or trustee by this chapter. Every instrument
13 creating the life tenancy, defeasible fee, estate, or trust in
14 existence on July 1, 2009, or thereafter executed shall be
15 construed in conformity with the intent and purpose of this
16 chapter. No trustee, officer, or agent of a lessor or other
17 legal or equitable owner shall, while acting pursuant to this
18 chapter, be deemed to be acting in bad faith or to have
19 committed a breach of trust.

20 **§ -5 Administration of chapter.** The corporation shall
21 administer this chapter.



1 § -6 Corporation's duties, generally. In addition to
2 any other duty prescribed by law and in this chapter, the
3 corporation shall:

4 (1) By December 31, 2009, adopt and promulgate, in
5 accordance with chapter 91, all rules necessary to
6 effectuate the purposes of this chapter;

7 (2) Enforce this chapter and the rules adopted pursuant
8 thereto;

9 (3) Subject to chapter 76, appoint and remove any
10 administrative, technical, and clerical staff as it
11 may require and prescribe their powers and duties;
12 except that the corporation may appoint, without
13 regard to chapter 76, one or more appraisers on a
14 part-time, contractual basis for the purposes set
15 forth in this chapter;

16 (4) Establish reasonable fees to be assessed and collected
17 from lessees for the services of any appraiser;

18 (5) Disseminate information and render assistance to
19 lessees of business lots in order that this chapter
20 may be understood and effectively implemented;

21 (6) Conduct an investigation upon any written complaint or
22 whenever it appears to the corporation that this



1 chapter has been or is being violated. In any
2 investigation, the corporation may examine the books,
3 accounts, records, and files of any person connected
4 with the matter under investigation and conduct
5 hearings. If the corporation finds from satisfactory
6 evidence that any person has violated or is violating
7 this chapter, it may order the person to cease and
8 desist from continuing the violation or engaging
9 therein or doing any act or acts in furtherance
10 thereof and, where necessary, it may bring an action
11 in the name of the State in any court of competent
12 jurisdiction for enforcement of its orders;

13 (7) Acquire and sell all necessary leased fee interests as
14 provided in this chapter;

15 (8) Make and execute contracts and other instruments
16 necessary or convenient to the exercise of the powers
17 of the corporation;

18 (9) From time to time, require from the lessors of leased
19 business lots and all fee owners and legal and
20 equitable owners of lots any information as the
21 corporation may reasonably require in connection with
22 the administration of this chapter; and



1 (10) Do all things necessary and convenient to carry out
2 the powers expressly conferred upon it by this
3 chapter.

4 § -7 Corporation members, officers, or employees;
5 prohibited interests. No member of the corporation or any
6 officer or employee administering this chapter shall acquire any
7 interest, direct or indirect, in the ownership or development of
8 any development tract other than by gift, devise, or
9 inheritance. No member, officer, or employee shall have or
10 acquire any interest, direct or indirect, in the financing or in
11 any contract or proposed contract for services to be furnished
12 or used in connection with or relating to the development of any
13 development tract. If any member, officer, or employee has or
14 acquires an interest by gift, devise, or inheritance, direct or
15 indirect, in any development tract or is a lessee of any
16 business lot affected by the eminent domain proceedings
17 instituted under this chapter, the member, officer, or employee
18 shall immediately disclose the same in writing to the
19 corporation and the disclosure shall be entered upon the minutes
20 of the corporation. The member, officer, or employee shall not
21 participate in any action by the corporation relating to the
22 property, tract, or contract in which the member, officer, or



1 employee has or acquires any interest. Violation of this
2 section constitutes misconduct in office and is cause for
3 dismissal.

4 **§ -8 Development tract subject to conversion of business**
5 **lots.** The leasehold interest in business lots in a development
6 tract shall be subject to conversion to fee simple under this
7 chapter if the development tract was:

- 8 (1) Developed and subdivided into business lots occupied
9 by lessees under leases executed before July 1, 2009;
10 or
11 (2) Developed and subdivided or partially developed into
12 business lots occupied or to be occupied by lessees
13 under leases executed after June 30, 2009.

14 **§ -9 Designation for acquisition of leased fee interest**
15 **in business lots in development tract.** (a) When, in a
16 development tract owned by a single fee simple owner, at least
17 twenty-five lessees of the business lots or more than fifty per
18 cent of the lessees of all business lots, whichever is less,
19 apply to the corporation for the purchase of the leased fee
20 interests in the business lots, the corporation shall examine
21 the applications to determine if all applicants qualify for the
22 purchase under this chapter.



1 (b) If the corporation finds that the necessary minimum
2 number or percentage of applicants are eligible to purchase, the
3 corporation shall hold a public hearing in the county in which
4 the subject development tract is located. The corporation shall
5 give public notice of the time and place of the public hearing
6 on at least three different days, the last notice being not less
7 than five days before the date of hearing.

8 (c) If, after the public hearing, the corporation finds
9 that the acquisition of the leased fee interests in the business
10 lots of lessees eligible to purchase the lots will effectuate
11 the public purpose of this chapter, the corporation shall
12 designate the leased fee interests in the business lots for
13 acquisition.

14 In no instance shall the corporation designate for
15 acquisition the leased fee interest in a business lot, the
16 lessee of which is ineligible for purchase under this chapter.

17 Additionally, the corporation shall not designate the
18 leased fee interest in any business lot in the development tract
19 for acquisition if the corporation finds that either:

20 (1) The ineligibility of any applicant causes the minimum
21 number or percentage of eligible applicants to fall
22 below that required under subsection (a); or



1 (2) The acquisition of the leased fee interests in the
2 subject business lots will not effectuate the public
3 purpose of this chapter.

4 (d) The designation under subsection (c) shall authorize
5 the corporation to commence the acquisition of the leased fee
6 interests in the designated business lots in the development
7 tract through the exercise of the power of eminent domain.

8 § -10 Eligibility for purchase. (a) No application to
9 purchase the leased fee interest in a business lot in a
10 development tract shall be accepted nor shall any sale of a
11 leased fee interest be made to any lessee unless the lessee
12 meets the following requirements:

13 (1) Holds a lease on the lot; provided that for the
14 purposes of this paragraph, "lease" shall not include
15 a sublease;

16 (2) Has legal title to a structure situated on the
17 business lot;

18 (3) Has a letter of credit, certificate of deposit, proof
19 of funds, or approved application from a lending
20 institution demonstrating that the lessee will be able
21 to promptly pay the corporation for the leased fee
22 interest in the business lot;



- 1 (4) Submits an application in good faith in a form
2 acceptable to the corporation;
- 3 (5) Executes a contract for the purchase of the leased fee
4 interest from the corporation if the corporation
5 acquires the interest;
- 6 (6) Does not own in fee simple any other land zoned to
7 permit any business, commercial, or industrial use
8 within the county in which the business lot is
9 located. A person shall be deemed to "own" land if
10 the person, the person's spouse, or both, own land,
11 unless they are separated and living apart under a
12 decree of a court of competent jurisdiction; and
- 13 (7) If the person is an individual, the person is at least
14 eighteen year old.
- 15 (b) The amount set by the corporation for the leased fee
16 interest in the designated business lot for which the lessee
17 must obtain a letter of credit, certificate of deposit, proof of
18 funds, or approved application for loan shall not be admissible
19 for any reason in any action, suit, or proceeding brought under
20 this chapter. Any financial information the corporation may
21 request and obtain from the lessee shall not be discoverable or



1 admissible in any action, suit, or proceeding brought under this
2 chapter.

3 (c) The corporation may require additional testimony or
4 evidence under oath in connection with any application. The
5 corporation shall adopt rules pursuant to chapter 91 to
6 effectuate the purposes of this section.

7 § -11 Deposits by lessees. (a) The corporation shall
8 require the submission of a deposit by a lessee determined
9 eligible by the corporation to purchase the leased fee interest
10 in a business lot under this chapter. The amount of the deposit
11 shall be established by rule. All interest earned on the
12 deposit submitted by a lessee shall accrue to the lessee.

13 (b) The deposit shall be applied by the corporation to
14 payment of appraisal, survey, attorney fees, and any other cost
15 the corporation has incurred as a result of the designation,
16 with the remainder of the deposit to be applied toward the
17 purchase of the applicable leased fee interests. The
18 corporation shall incur no liability for the deposits made under
19 this section.

20 § -12 Preliminary negotiation required. (a) Within
21 twenty days of designating the leased fee interests in business
22 lots for acquisition, the corporation shall request the lessor



1 and the eligible lessees to negotiate the just compensation that
2 the lessees shall pay to the lessor to acquire the lessor's
3 interests in the designated business lots.

4 If no agreement is reached within sixty days after the
5 request to negotiate, the parties shall simultaneously exchange
6 written final offers together with any appraisals, other
7 documents, and any other expert opinions on which their
8 negotiating positions were based. Copies of the final offers
9 and related documents shall be submitted to the corporation and
10 the corporation may use the information in determining, prior to
11 commencing condemnation proceedings, the probability that the
12 lessees will be able to meet the financial requirements of
13 section -10(a)(3).

14 (b) This preliminary negotiation shall be in advance of
15 and shall not constitute any part of any action in condemnation
16 or eminent domain.

17 (c) Any offers, appraisals, other documents, or any other
18 expert opinions giving a value of the lessor's interest in the
19 designated business lots that were prepared by a party for use
20 in preliminary negotiations as provided for in this section, for
21 setting qualification amounts pursuant to section -10(a)(3),
22 or for negotiations to determine the just compensation to



1 acquire the lessor's interest in the designated business lots
2 shall not be discoverable, usable, or admissible by an opposing
3 or adverse party in any eminent domain proceeding brought under
4 this chapter.

5 § -13 Exercise of power of eminent domain. Within
6 twelve months after the designation of the leased fee interests
7 in the business lots for acquisition, the corporation shall
8 acquire through voluntary action of the parties or institute
9 eminent domain proceedings to acquire the designated leased fee
10 interests. The corporation shall exercise its power of eminent
11 domain in the same manner as provided in chapter 101. If the
12 leased fee interests to all of the designated business lots are
13 not acquired or eminent domain proceedings are not instituted
14 within the twelve-month period, the corporation shall reimburse
15 the fee owner, lessor, and legal and equitable owners of the
16 designated business lots their actual out-of-pocket expenses of
17 appraisal, survey, and attorney fees; provided that:

- 18 (1) If the leased fee interests in all of the designated
19 business lots are not acquired or eminent domain
20 proceedings are not instituted within the twelve-month
21 period as a result of a lessee's dismissal,
22 discontinuance, or withdrawal from the eminent domain

1 proceedings or failure to purchase the leased fee
2 interest condemned because of the lessee's inability,
3 failure, or refusal to comply with any provision under
4 this chapter, then the lessee, not the corporation,
5 shall be solely responsible to reimburse the fee
6 owner, lessor, and legal and equitable owners for
7 their respective prorated costs that they may have
8 incurred as a result of the designation and
9 condemnation; and

- 10 (2) If, during the twelve-month period, the leased fee
11 interests in some of the designated business lots were
12 acquired by the corporation through voluntary sale by
13 the lessor, the acquired leased fee interests shall
14 remain in the ownership of the corporation or, if the
15 interests were subsequently purchased by the lessee,
16 in the ownership of the lessee.

17 § -14 **Eminent domain trial.** The parties to the eminent
18 domain action brought under this chapter shall be the
19 corporation as plaintiff and the lessors and all other necessary
20 parties as defendants. The corporation shall not have the
21 burden of proof in establishing the fair market value of the
22 leased fee interest being acquired. Instead, all parties,



1 including the corporation, shall be given an opportunity to
2 present evidence of the fair market value of the leased fee
3 interest being acquired.

4 **§ -15 Compensation.** The compensation to be paid for the
5 leased fee interest in a designated business lot shall be the
6 owner's basis as defined in section -1. The compensation
7 shall be determined as of the date of the summons of the
8 complaint to institute the eminent domain action.

9 **§ -16 Interest acquired.** (a) The interest to be
10 acquired by the corporation in a business lot under this chapter
11 shall be all of the right, title, and interest of the fee owner
12 and, if any, the lessor and all legal and equitable owners in
13 the designated business lot, subject to all covenants,
14 conditions, easements, reservations, and restrictions of record
15 running with the land or contained in the agreement of sale,
16 deed, or other conveyance held by the fee owner, lessor, and
17 legal and equitable owners, or permitted or suffered by lessees
18 of existing business lot leases that are not inconsistent with
19 the intent of this chapter. The acquisition shall terminate all
20 the right, title, and interest of the fee owner, lessor, and all
21 legal and equitable owners, whether the interest be a remainder,



1 vested or contingent, a reversion, or other beneficial interest
2 in the property, present or prospective.

3 (b) If the leasehold interest in the designated business
4 lot is subject to any mortgage, lien, or encumbrance suffered or
5 permitted by the lessee, including rights arising through
6 divorce, marriage, or assignment, the purchase of the leased fee
7 interest by the lessee shall in no manner affect or impair the
8 mortgage, lien, or encumbrance or the security afforded thereby
9 to the holder thereof, and the leasehold shall continue,
10 notwithstanding the purchase of the leased fee by the lessee,
11 for the purpose and to extent necessary to avoid any impairment
12 of the leasehold security, unless the holder of the leasehold
13 mortgage, lien, or encumbrance shall in writing consent to the
14 transfer thereof to the fee as herein provided. Upon the
15 written consent by the holder thereof, each mortgage, lien, or
16 encumbrance to which the leasehold is subject and to which the
17 consent refers shall be transferred to and shall bind the fee
18 acquired by the lessee, and shall thereafter continue in full
19 force and effect as a mortgage, lien, or encumbrance of the fee
20 acquired by the lessee, in the same order and priority among the
21 mortgages, liens, and encumbrances so transferred to the fee as



1 the same applied to and bound the lessee's immediate, previous
2 leasehold interest.

3 **§ -17 Interest in compensation paid by the corporation.**

4 The fee owner, lessor, and all legal and equitable owners of a
5 designated business lot that has been acquired by the
6 corporation shall share in the compensation paid by the
7 corporation as their respective interests appear.

8 Notwithstanding any contrary provision in any contract or lease,
9 a developer or other person entitled to share in the lease
10 rental proceeds shall share in the compensation paid by the
11 corporation to the extent of the developer's or other person's
12 interest as may be determined by agreement of those entitled to
13 share in the compensation paid by the corporation or, in the
14 absence of such agreement, pursuant to chapter 658A.

15 **§ -18 Compulsory or involuntary conversion.** It is the

16 intent of the legislature, within the meaning of Section 1033 or
17 Section 1231 of the Internal Revenue Code or the applicable
18 provisions of chapter 235, as well as all other statutes, rules,
19 regulations, administrative orders, and legal interpretations
20 within the federal and state governments relating to taxation,
21 that any conveyance of title to property by a fee owner to the
22 corporation under this chapter shall constitute a compulsory or



1 involuntary conversion as a result of the exercise of the power
2 of condemnation or the threat of imminence thereof, and that the
3 fee owner shall not be deemed, by reason of any provision of
4 this chapter or the execution by the fee owner of leases to the
5 property and other properties subsequent to June 30, 2009, to
6 hold the property primarily for sale to customers in the
7 ordinary course of trade or business.

8 **§ -19 Purchase of leased fee interest.** (a) The lessee
9 of a designated business lot within a development tract who has
10 applied to and been determined by the corporation as eligible to
11 purchase the leased fee interest in the lot shall purchase the
12 leased fee interest from the corporation within sixty days of
13 acquisition of the interest by the corporation. The lessee
14 shall pay to the corporation the entire cost paid by the
15 corporation to acquire the leased fee interest in the business
16 lot. The purchase contract required by section -10(a)(5)
17 shall include this requirement.

18 (b) If a lessee fails or refuses to purchase the leased
19 fee interest in the designated business lot within the sixty-day
20 period, then:

21 (1) The lessee shall pay to the corporation the lessee's
22 pro rata share of all direct costs incurred by the



1 corporation in the acquisition of the leased fee
2 interests in the designated business lots within the
3 development tract, including costs of appraisal,
4 publication, and survey, and the corporation may take
5 whatever action it deems necessary to collect the
6 costs. In addition, if the lessee intentionally
7 breached the purchase contract with the corporation,
8 the corporation shall be entitled to any available
9 remedy; and

- 10 (2) The leased fee interest in the business lot shall
11 revert to the fee simple owner, and the lessee shall
12 be liable to the fee simple owner for the pro rata
13 share of the cost of the owner in the proceedings by
14 the corporation to acquire the leased fee interest.

15 § -20 **Quitclaim deeds.** Unless otherwise provided by
16 law, the corporation shall issue quitclaim deeds whenever it
17 conveys the leased fee interest in a designated business lot to
18 a lessee under this chapter. In no instance shall the
19 corporation be considered a guarantor or warrantor of the
20 condition and quality of the property upon the issuance of any
21 quitclaim deed or lease.



1 § -21 Termination of proceedings when eligible
2 applicants fall below minimum number or percentage. If, after
3 the corporation designates the leased fee interests in business
4 lots for acquisition, the number of eligible applicants for the
5 acquisition falls below the minimum number or percentage
6 established under section -9, the corporation shall terminate
7 all proceedings to acquire the designated leased fee interests.
8 Upon the termination, the designation shall be void, and the fee
9 simple owner, lessor, and legal and equitable owners shall be
10 reimbursed by the corporation for their costs incurred for
11 proceedings under this chapter.

12 The corporation shall require all lessees who were parties
13 to the proceedings to pay the corporation the entire amount
14 reimbursed to the fee simple owner, lessor, and legal and
15 equitable owners.

16 § -22 Not for profit; no public funds. (a) It is
17 declared to be the policy of the State that the corporation
18 shall carry out its responsibilities under this chapter in an
19 efficient manner so as to enable it to fix the sale price of the
20 leased fee interest in a designated business lot at the lowest
21 possible amount consistent with the purpose of this chapter and
22 that the corporation shall not administer this chapter for



1 profit or as a source of revenue to the State. To this end, the
2 corporation shall fix the sale price at an amount no higher than
3 it shall find to be necessary to produce revenues that shall be
4 sufficient:

5 (1) To pay the acquisition price of the leased fee
6 interest in designated business lots or reimburse the
7 corporation for any funds advanced to pay the
8 acquisition price; and

9 (2) To pay the cost of administering this chapter.

10 (b) It is also declared to be the policy of this State
11 that no public funds shall be expended to acquire the leased fee
12 interests in designated business lots or administer this
13 chapter; except that public funds may be advanced by the
14 corporation for these purposes if the corporation is assured
15 that the advance shall be reimbursed by lessees of the
16 designated business lots. For the purpose of this subsection,
17 "public funds" shall not include moneys:

18 (1) Passed through the corporation from lessees to lessors
19 for the purchase of the leased fee interests in
20 designated business lots or, if the leased fee
21 interests are not acquired, payment of costs incurred
22 by lessors; or



1 (2) Deposited or paid by lessees to defray the cost to the
2 corporation of activities and proceedings to acquire
3 the leased fee interests in designated business lots
4 on behalf of the lessees.

5 § -23 **Exemption from taxation and assessments.** The
6 corporation and property acquired by it under this chapter shall
7 be exempt from any and all taxes and assessments.

8 § -24 **Business lot conversion revolving fund.** There
9 shall be created a business lot conversion revolving fund. All
10 moneys received or collected by the corporation under this
11 chapter shall be deposited in the revolving fund. Expenditures
12 by the corporation to administer or enforce this chapter shall
13 be made from the revolving fund.

14 § -25 **Penalty.** Any person who violates this chapter
15 shall be fined not more than \$5,000 nor less than \$1,000,
16 imprisoned not more than one year, or both. All fines collected
17 shall be deposited in the business lot conversion revolving
18 fund."

19 SECTION 3. This Act shall take effect on July 1, 2009.



Report Title:

Leasehold Conversion; Business Properties

Description:

Provides for the mandatory lease-to-fee conversion of leasehold business property. (HB1606 HD1)

