

---

---

# A BILL FOR AN ACT

RELATING TO GROUND LEASES.

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

**PART I**

1  
2           SECTION 1. The legislature finds that Hawaii's unique real  
3 estate market, in which fee-simple ownership of real property  
4 was unavailable to most residents until the intervention of the  
5 legislature and ultimately the United States Supreme Court at a  
6 relatively recent date, creates unique challenges for  
7 homeowners, landowners, and for public policy. Since a  
8 significant class of homeowners in the State own their housing  
9 units but hold only a leasehold interest in the land on which  
10 their residences are situated, these homeowners may be subject  
11 to removal from their home upon the expiration of the ground  
12 lease for the property that underlies the housing unit. For  
13 residents of these housing units, expiration of a ground lease  
14 means loss of a home through no fault of their own. Further,  
15 many leasehold units in condominiums and cooperative housing  
16 projects are currently used as affordable rental units by long-  
17 term tenants who have deep ties with the local community.  
18 However, the legislature finds that the property rights of



1 homeowners and long-term residents in these cases must be  
2 weighed against the competing property rights of landowners who  
3 hold the expiring ground lease.

4 Taking into account the real trauma associated with the  
5 loss of a home, including the special hardships for seniors and  
6 individuals with a fixed income, the legislature must  
7 acknowledge that a long-term residential ground lease  
8 arrangement is a private contract that allows for the purchase  
9 of a home at a significantly lower cost than the purchase of a  
10 fee-simple ownership. Further, many lessors of long-term  
11 residential leasehold property are either individuals with  
12 modest land holdings or institutions that hold land in support  
13 of a primary institutional purpose such as education that  
14 ultimately serves the public good. The legislature finds that  
15 important rights and legitimate interests lie on the lessee and  
16 lessor sides of the long-term residential ground lease  
17 relationship.

18 The legislature further finds that the shortage of  
19 affordable housing in the State is a persistent problem, with a  
20 shortfall of over 24,000 units projected by 2015. The  
21 legislature finds that the expiration of long-term residential  
22 ground leases will result in the loss of approximately 13,000



1 affordable units at a time when homelessness due to a lack of  
2 accessible housing is becoming more prevalent.

3 The legislature finds that in order to achieve the  
4 difficult task of balancing the interests of landowners and  
5 leasehold homeowners and in servicing the larger public policy  
6 of upholding the property rights of homeowners and landowners,  
7 the legislature finds that legislative action regarding  
8 residential leasehold land holdings is warranted. Therefore,  
9 the purpose of this Act is to mitigate the negative effects of  
10 the expiration of a class of long-term residential ground leases  
11 by providing incentives for lessors and lessees to engage in  
12 negotiations to extend long-term ground leases when extension is  
13 possible and to provide alternate means for leasehold homeowners  
14 and long term renters to remain in their homes where lease  
15 extension is not possible.

16 SECTION 2. Chapter 666, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:

19 "§666- Expiration of long-term residential ground  
20 leases. (a) No later than five years prior to the expiration  
21 of a long-term residential ground lease for housing units in a  
22 condominium or cooperative housing project, the lessor shall



1 notify all lessees as to whether the lessor plans to develop or  
2 redevelop the property that is subject to the long-term ground  
3 lease and whether the lessor is willing to extend the long-term  
4 ground lease or sell the leased-fee interest or whether the  
5 lessor intends to enforce the expiration of the lease.

6 (b) If the lessor of a long-term residential ground lease  
7 intends to develop or redevelop all or any part of the property  
8 subject to the long-term ground lease no sooner than five years  
9 after the expiration of the long-term ground lease, a lessee may  
10 request an extension of the long-term ground lease for all or  
11 any part of the land that is not subject to development or  
12 redevelopment within the five-year period for a minimum of ten  
13 years.

14 (c) If a lessor extends a long-term residential ground  
15 lease pursuant to subsection (b), ownership of all residential  
16 units situated on the land subject to lease extension shall be  
17 extended until the commencement of development or redevelopment  
18 of the subject land. Pursuant to section 235- , if the lessor  
19 extends the long-term residential ground lease for a period of  
20 thirty years or more, the lessor shall be entitled to an income  
21 tax credit of per cent of the annual rental income  
22 collected from the property.



1        (d) If a lessor does not extend a long-term residential  
2 ground lease pursuant to subsection (b), the lease shall  
3 terminate on the expiration date specified in the lease;  
4 provided that any owner-occupant or long-term renter shall be  
5 allowed to remain in the occupant or lessee's unit as a tenant  
6 subject to chapter 521 until the commencement of development or  
7 redevelopment of the subject land; provided that:

8        (1) The monthly rent payable to the lessor by an  
9 owner-occupant of a unit shall not exceed the total of  
10 the amount of the monthly maintenance fee plus the  
11 lease rent payable for the unit as of the expiration  
12 date of the long-term residential ground lease;

13        (2) The monthly rent payable to the lessor by a long-term  
14 renter shall not exceed the rental amount under the  
15 rental agreement with the unit owner as of the  
16 expiration date of the long-term residential ground  
17 lease; provided further that if the rental amount  
18 under the rental agreement does not include general  
19 excise tax, the rental amount shall be amended to  
20 include general excise tax;

21        (3) The lessor may increase the rent payable under  
22 paragraphs (1) and (2) by an amount that does not



1 exceed the consumer price index increase for the  
2 period of the rental increase;

3 (4) Ownership of all leasehold improvements, including  
4 household appliances that replace the original  
5 appliance included in the unit at the time of  
6 purchase, shall revert to the lessor and the lessor  
7 shall not be required to reimburse the unit owner for  
8 the improvements; and

9 (5) Monthly rent calculated pursuant to paragraphs (1) and  
10 (2) shall be personal to the owner-occupant or long-  
11 term renter and shall not be transferrable to any  
12 person who was not designated on the title to the unit  
13 as an owner or on the rental agreement as a tenant as  
14 of the expiration date of the long-term residential  
15 ground lease.

16 (e) For purposes of this section:

17 "Long-term renter" means a person who has lived in a  
18 residential housing unit in a condominium or cooperative housing  
19 project as a tenant under a rental agreement for any specified  
20 term for at least one year prior to the expiration of a long-  
21 term residential ground lease that applies to the housing unit.



1 "Owner-occupant" means a person who owns a leasehold  
2 interest in a residential housing unit in a condominium or  
3 cooperative housing project in which the person lives as the  
4 person's primary residence."

5 PART II

6 SECTION 3. Chapter 235, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9 "§235- Tax credit to promote the extension of long-term  
10 residential ground leases. (a) For taxable years beginning  
11 after December 31, 2012, any taxpayer that is the lessor of a  
12 long-term residential ground lease subject to section 666- (c)  
13 that properly files an income tax return for the taxable year  
14 may claim an income tax credit under this section against the  
15 taxpayer's net income tax liability, if any, imposed by this  
16 chapter for the taxable year in which the credit is properly  
17 claimed.

18 (b) The tax credit shall be per cent of the annual  
19 rental income collected from the property subject to a lease  
20 extension pursuant to section 666- (c); provided that the  
21 taxpayer extends the term of a long-term residential ground  
22 lease for a period of thirty years or more pursuant to section



1 666- (c); provided further that the taxpayer submits evidence  
2 of the continuation of the long-term residential ground lease  
3 for the specified term and the continued occupation of the  
4 property by the lessee for each year that the credit is claimed.

5 (c) If the tax credit claimed by the taxpayer under this  
6 section exceeds the amount of income tax payments due from the  
7 taxpayer, the excess of credit over payments due shall be  
8 refunded to the taxpayer; provided that no refunds or payments  
9 on account of the tax credit allowed by this section shall be  
10 made for amounts less than \$1.

11 (d) The director of taxation shall prepare any forms that  
12 may be necessary to claim a credit under this section, may  
13 require proof of the claim for the tax credit, and may adopt  
14 rules pursuant to chapter 91 to effectuate the purpose of this  
15 section.

16 (e) All of the provisions relating to assessments and  
17 refunds under this chapter and under section 231-23(c)(1) shall  
18 apply to the tax credit under this section.

19 (f) Claims for the tax credit under this section,  
20 including any amended claims, shall be filed on or before the  
21 end of the twelfth month following the taxable year for which  
22 the credit may be claimed."





1 SECTION 4. New statutory material is underscored.

2 SECTION 5. This Act shall take effect on July 1, 2050;

3 provided that part II of this Act shall apply to taxable years

4 beginning after December 31, 2012.

5



**Report Title:**

Ground Leases; Residential Real Property; Tax Credit

**Description:**

Requires notice of intended disposition of land subject to an expiring long-term residential ground lease; provides for extension of a long-term residential ground lease; provides for the conversion of owner-occupancy or long-term rental of units subject to an expired long-term residential ground lease to tenancy subject to the landlord-tenant code; provides an income tax credit for rental income collected from property subject to an extension of thirty years or more of a long-term residential ground lease. Effective 7/1/2050. (SD1)

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

