

JAN 20 2012

A BILL FOR AN ACT

RELATING TO LEASEHOLD CONVERSION.

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

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



1 and conditions in leases that were disadvantageous to the
2 lessees.

3 Accordingly, in 1967, the legislature enacted Act 307,
4 Session Laws of Hawaii 1967, which 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. As a result, over the following years,
17 the number of leasehold single family residences fell from
18 approximately twenty-eight thousand to four thousand six
19 hundred, mostly through voluntary conversions by the large
20 landowners and to the benefit of both the landowner and the
21 homeowner.



BUSINESS LEASEHOLDS

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

"Business lot":

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

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

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

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

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



1 property would be contiguous except for the interposition or
2 existence of a 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 the 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 a lot that would apply if the interest was normally
19 traded on an open market. The fair market value of the owner's
20 basis shall be established to provide the lessor with just
21 compensation for the lessor's interests in the lot and shall
22 take into consideration every interest and equity of the lessee



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

5 (1) The sum of:

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

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

17 (2) The current fair market value of the lot, valued as if
18 it were a fee simple lot and as if the fee title were
19 unencumbered, and excluding onsite improvements,
20 established by a market data approach using comparable
21 sales, less the following:



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



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

9 § -2 **Applicability.** This chapter applies to all lands
10 leased as business lots that are owned or held privately. This
11 chapter is not intended to supersede or preclude any other
12 remedy at law available to business lot lessees or the State,
13 including those available under chapter 480.

14 § -3 **No estoppel or waiver.** The rights granted to
15 lessees by this chapter shall be effective, notwithstanding any
16 provision in any lease or contract to the contrary. No lessee
17 shall be estopped by any covenant, term, condition, or contract,
18 however worded, from claiming the rights granted to the lessee
19 by this chapter or otherwise be deemed to have waived any
20 rights. Any provision in any lease or contract contrary to the
21 intent or purpose of this chapter is void.



1 § -4 **Trusts and estates.** The rights granted to lessees
2 by this chapter shall be effective, notwithstanding any
3 condition or provision to the contrary in any instrument
4 creating any life tenancy, defeasible fee, estate, or trust,
5 regardless of whether the tenancy, fee, estate, or trust was in
6 effect prior to July 1, 2012, or is created thereafter. The
7 life tenant, holder, officer, or trustee of any tenancy,
8 defeasible fee, estate, or trust in effect prior to July 1,
9 2012, shall perform all acts required of the life tenant,
10 holder, officer, or trustee by this chapter. Every instrument
11 creating the life tenancy, defeasible fee, estate, or trust in
12 existence on July 1, 2012, or thereafter executed shall be
13 construed in conformity with the intent and purpose of this
14 chapter. No trustee, officer, or agent of a lessor or other
15 legal or equitable owner shall, while acting pursuant to this
16 chapter, be deemed to be acting in bad faith or to have
17 committed a breach of trust.

18 § -5 **Administration of chapter.** The corporation shall
19 administer this chapter.

20 § -6 **Corporation's duties, generally.** In addition to
21 any other duty prescribed by law and this chapter, the
22 corporation shall:



- 1 (1) By December 31, 2012, adopt, in accordance with
2 chapter 91, all rules necessary to effectuate the
3 purposes of this chapter;
- 4 (2) Enforce this chapter and the rules adopted pursuant
5 thereto;
- 6 (3) Subject to chapter 76, appoint and remove any
7 administrative, technical, and clerical staff as it
8 may require and prescribe their powers and duties;
9 except that the corporation may appoint, without
10 regard to chapter 76, one or more appraisers on a
11 part-time, contractual basis for the purposes set
12 forth in this chapter;
- 13 (4) Establish reasonable fees to be assessed and collected
14 from lessees for the services of any appraiser;
- 15 (5) Disseminate information and render assistance to
16 lessees of business lots for the effective
17 implementation of this chapter;
- 18 (6) Conduct an investigation of any written complaint or
19 whenever it appears to the corporation that this
20 chapter has been or is being violated. In any
21 investigation, the corporation may examine the books,
22 accounts, records, and files of any person connected



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

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

12 (8) Make and execute contracts and other instruments
13 necessary or convenient to the exercise of the powers
14 of the corporation;

15 (9) From time to time, require the lessors of leased
16 business lots and all fee owners and legal and
17 equitable owners of lots to provide information that
18 the corporation may reasonably require in connection
19 with the administration of this chapter; and

20 (10) Do all things necessary and convenient to carry out
21 the powers expressly conferred upon it by this
22 chapter.



1 § -7 Corporation members, officers, or employees;
2 prohibited interests. No member of the corporation or any
3 officer or employee administering this chapter shall acquire any
4 interest, direct or indirect, in the ownership or development of
5 any development tract other than by gift, devise, or
6 inheritance. No member, officer, or employee shall have or
7 acquire any interest, direct or indirect, in the financing or in
8 any contract or proposed contract for services to be furnished
9 or used in connection with or relating to the development of any
10 development tract. If any member, officer, or employee has or
11 acquires an interest by gift, devise, or inheritance, direct or
12 indirect, in any development tract or is a lessee of any
13 business lot affected by any eminent domain proceeding
14 instituted under this chapter, the member, officer, or employee
15 shall immediately disclose the same in writing to the
16 corporation and the disclosure shall be entered upon the minutes
17 of the corporation. The member, officer, or employee shall not
18 participate in any action by the corporation relating to the
19 property, tract, or contract in which the member, officer, or
20 employee has or acquires any interest. Violation of this
21 section constitutes misconduct in office and is cause for
22 dismissal.



1 § -8 **Development tract subject to conversion of business**
2 **lots.** The leasehold interest in business lots in a development
3 tract shall be subject to conversion to fee simple under this
4 chapter if the development tract was:

- 5 (1) Developed and subdivided into business lots occupied
6 by lessees under leases executed before July 1, 2012;
- 7 or
- 8 (2) Developed and subdivided or partially developed into
9 business lots occupied or to be occupied by lessees
10 under leases executed after June 30, 2012.

11 § -9 **Designation for acquisition of leased fee interest**
12 **in business lots in development tract.** (a) When, in a
13 development tract owned by a single fee simple owner, at least
14 twenty-five lessees of the business lots or more than fifty per
15 cent of the lessees of all business lots, whichever is less,
16 apply to the corporation for the purchase of the leased fee
17 interests in the business lots, the corporation shall examine
18 the applications to determine if all applicants qualify for the
19 purchase under this chapter.

20 (b) If the corporation finds that the necessary minimum
21 number or percentage of applicants is eligible to purchase, the
22 corporation shall hold a public hearing in the county in which



1 the subject development tract is located. The corporation shall
2 give public notice of the time and place of the public hearing
3 on at least three different days, the last notice being not less
4 than five days before the date of hearing.

5 (c) If, after the public hearing, the corporation finds
6 that the acquisition of the leased fee interests in the business
7 lots of lessees eligible to purchase the lots effectuates the
8 purpose of this chapter, the corporation shall designate the
9 leased fee interests in the business lots for acquisition.

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

13 Additionally, the corporation shall not designate the
14 leased fee interest in any business lot in the development tract
15 for acquisition if the corporation finds that:

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

19 (2) The acquisition of the leased fee interests in the
20 subject business lots will not effectuate the purpose
21 of this chapter.



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

5 § -10 Eligibility for purchase. (a) No application to
6 purchase the leased fee interest in a business lot in a
7 development tract shall be accepted and no sale of a leased fee
8 interest shall be made to any lessee unless the lessee meets the
9 following requirements:

- 10 (1) Holds a lease on the lot; provided that for the
11 purposes of this paragraph, "lease" shall not include
12 a sublease;
- 13 (2) Has legal title to a structure situated on the
14 business lot;
- 15 (3) Has a letter of credit, certificate of deposit, proof
16 of funds, or approved application from a lending
17 institution demonstrating that the lessee will be able
18 to promptly pay the corporation for the leased fee
19 interest in the business lot;
- 20 (4) Submits an application in good faith in a form
21 acceptable to the corporation;



1 (5) Executes a contract for the purchase of the leased fee
2 interest from the corporation if the corporation
3 acquires the interest;

4 (6) Does not own in fee simple any other land zoned to
5 permit any business, commercial, or industrial use
6 within the county in which the business lot is
7 located. A person shall be deemed to "own" land if
8 the person, the person's spouse, or both, own land,
9 unless they are separated and living apart under a
10 decree of a court of competent jurisdiction; and

11 (7) If the person is an individual, the person is at least
12 eighteen year old.

13 (b) The amount set by the corporation for the leased fee
14 interest in the designated business lot for which the lessee
15 must obtain a letter of credit, certificate of deposit, proof of
16 funds, or approved application for loan shall not be admissible
17 for any reason in any action, suit, or proceeding brought under
18 this chapter. Any financial information the corporation may
19 request and obtain from the lessee shall not be discoverable or
20 admissible in any action, suit, or proceeding brought under this
21 chapter.



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

5 § -11 **Deposits by lessees.** (a) The corporation shall
6 require the submission of a deposit by a lessee determined
7 eligible by the corporation to purchase the leased fee interest
8 in a business lot under this chapter. The amount of the deposit
9 shall be established by rule. All interest earned on the
10 deposit submitted by a lessee shall accrue to the lessee.

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

18 § -12 **Preliminary negotiation required.** (a) Within
19 twenty days of designating the leased fee interests in business
20 lots for acquisition, the corporation shall request the lessor
21 and the eligible lessees to negotiate the just compensation that



1 the lessees shall pay to the lessor to acquire the lessor's
2 interests in the designated business lots.

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

13 (b) Preliminary negotiation as required by subsection (a)
14 shall be in advance of and shall not constitute any part of any
15 action in condemnation or eminent domain.

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



1 shall not be discoverable, usable, or admissible by an opposing
2 or adverse party in any eminent domain proceeding brought under
3 this chapter.

4 § -13 **Exercise of power of eminent domain.** Within
5 twelve months after the designation of the leased fee interests
6 in the business lots for acquisition, the corporation shall
7 acquire through voluntary action of the parties or institute
8 eminent domain proceedings to acquire the designated leased fee
9 interests. The corporation shall exercise its power of eminent
10 domain in the same manner as provided in chapter 101. If the
11 leased fee interests to all of the designated business lots are
12 not acquired or eminent domain proceedings are not instituted
13 within the twelve-month period, the corporation shall reimburse
14 the fee owner, lessor, and legal and equitable owners of the
15 designated business lots their actual out-of-pocket expenses of
16 appraisal, survey, and attorney fees; provided that:

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



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

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

16 § -14 **Eminent domain trial.** The parties to the eminent
17 domain action brought under this chapter shall be the
18 corporation as plaintiff and the lessors and all other necessary
19 parties as defendants. The corporation shall not have the
20 burden of proof in establishing the fair market value of the
21 leased fee interest being acquired. All parties, including the
22 corporation, shall be given an opportunity to present evidence



1 of the fair market value of the leased fee interest being
2 acquired.

3 § -15 **Compensation.** The compensation to be paid for the
4 leased fee interest in a designated business lot shall be the
5 owner's basis as defined in section -1. The compensation
6 shall be determined as of the date of the summons of the
7 complaint to institute the eminent domain action.

8 § -16 **Interest acquired.** (a) The interest to be
9 acquired by the corporation in a business lot under this chapter
10 shall be all of the right, title, and interest of the fee owner
11 and, if any, the lessor and all legal and equitable owners in
12 the designated business lot, subject to all covenants,
13 conditions, easements, reservations, and restrictions of record
14 running with the land or contained in the agreement of sale,
15 deed, or other conveyance held by the fee owner, lessor, and
16 legal and equitable owners, or permitted or suffered by lessees
17 of existing business lot leases that are not inconsistent with
18 the intent of this chapter. The acquisition shall terminate all
19 the right, title, and interest of the fee owner, lessor, and all
20 legal and equitable owners, whether the interest be a remainder,
21 vested or contingent, a reversion, or other beneficial interest
22 in the property, present or prospective.



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



1 § -17 **Interest in compensation paid by the corporation.**

2 The fee owner, lessor, and all legal and equitable owners of a
3 designated business lot that has been acquired by the
4 corporation shall share in the compensation paid by the
5 corporation as their respective interests appear.
6 Notwithstanding any contrary provision in any contract or lease,
7 a developer or other person entitled to share in the lease
8 rental proceeds shall share in the compensation paid by the
9 corporation to the extent of the developer's or other person's
10 interest as may be determined by agreement of those entitled to
11 share in the compensation paid by the corporation or, in the
12 absence of such agreement, pursuant to chapter 658A.

13 § -18 **Compulsory or involuntary conversion.** It is the
14 intent of the legislature, within the meaning of section 1033 or
15 section 1231 of the Internal Revenue Code or the applicable
16 provisions of chapter 235, as well as all other statutes, rules,
17 regulations, administrative orders, and legal interpretations
18 within the federal and state governments relating to taxation,
19 that any conveyance of title to property by a fee owner to the
20 corporation under this chapter shall constitute a compulsory or
21 involuntary conversion as a result of the exercise of the power
22 of condemnation or the threat of imminence thereof, and that the



1 fee owner shall not be deemed, by reason of any provision of
2 this chapter or the execution by the fee owner of leases to the
3 property and other properties subsequent to June 30, 2012, to
4 hold the property primarily for sale to customers in the
5 ordinary course of trade or business.

6 § -19 **Purchase of leased fee interest.** (a) The lessee
7 of a designated business lot within a development tract who has
8 applied to and been determined by the corporation as eligible to
9 purchase the leased fee interest in the lot shall purchase the
10 leased fee interest from the corporation within sixty days of
11 acquisition of the interest by the corporation. The lessee
12 shall pay to the corporation the entire cost paid by the
13 corporation to acquire the leased fee interest in the business
14 lot. The purchase contract required by section -10(a)(5)
15 shall include this requirement.

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

19 (1) The lessee shall pay to the corporation the lessee's
20 pro rata share of all direct costs incurred by the
21 corporation in the acquisition of the leased fee
22 interests in the designated business lots within the



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

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

13 § -20 **Quitclaim deeds.** Unless otherwise provided by
14 law, the corporation shall issue quitclaim deeds whenever it
15 conveys the leased fee interest in a designated business lot to
16 a lessee under this chapter. In no instance shall the
17 corporation be considered a guarantor or warrantor of the
18 condition and quality of the property upon the issuance of any
19 quitclaim deed or lease.

20 § -21 **Termination of proceedings when eligible**
21 **applicants fall below minimum number or percentage.** If, after
22 the corporation designates the leased fee interests in business



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

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

13 § -22 **Not for profit; no public funds.** (a) It is
14 declared to be the policy of the State that the corporation
15 shall carry out its responsibilities under this chapter in an
16 efficient manner so as to enable it to fix the sale price of the
17 leased fee interest in a designated business lot at the lowest
18 possible amount consistent with the purpose of this chapter and
19 that the corporation shall not administer this chapter for
20 profit or as a source of revenue to the State. To this end, the
21 corporation shall fix the sale price at an amount no higher than



1 it shall find to be necessary to produce revenues that shall be
2 sufficient:

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

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

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

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

21 (2) Deposited or paid by lessees to defray the cost to the
22 corporation of activities and proceedings to acquire



1 the leased fee interests in designated business lots
2 on behalf of the lessees.

3 § -23 Exemption from taxation and assessments. The
4 corporation and property acquired by it under this chapter shall
5 be exempt from any and all taxes and assessments.

6 § -24 Business lot conversion revolving fund. There
7 shall be created a business lot conversion revolving fund. All
8 moneys received or collected by the corporation under this
9 chapter shall be deposited in the revolving fund. Expenditures
10 by the corporation to administer or enforce this chapter shall
11 be made from the revolving fund.

12 § -25 Penalty. Any person who violates this chapter
13 shall be fined not more than \$5,000 nor less than \$1,000,
14 imprisoned not more than one year, or both. All fines collected
15 shall be deposited in the business lot conversion revolving
16 fund."

17 SECTION 3. This Act shall take effect on July 1, 2012.

18

INTRODUCED BY: Erzanne Chun Oakland



S.B. NO. 2452

Report Title:

Leasehold Conversion; Business Properties

Description:

Provides for the mandatory lease-to-fee conversion of leasehold business property.

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

