

JAN 18 2013

A BILL FOR AN ACT

RELATING TO GROUND LEASES.

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

1 **PART I**

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

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

18 "§666- Expiration of long-term residential ground
19 leases. (a) No later than five years prior to the expiration
20 of a long-term residential ground lease for housing units in a
21 condominium or cooperative housing project, the lessor shall
22 notify all lessees as to whether the lessor plans to develop or



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

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

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

21 (d) If a lessor does not extend a long-term residential
22 ground lease pursuant to subsection (b), the lease shall



1 terminate on the expiration date specified in the lease;
2 provided that any owner-occupant or long-term renter shall be
3 allowed to remain in the occupant or lessee's unit as a tenant
4 subject to chapter 521 until the commencement of development or
5 redevelopment of the subject land; provided that:

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

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

19 (3) The lessor may increase the rent payable under
20 paragraphs (1) and (2) by an amount that does not
21 exceed the consumer price index increase for the
22 period of the rental increase;



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

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

14 (e) For purposes of this section:

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

20 "Owner-occupant" means a person who owns a leasehold
21 interest in a residential housing unit in a condominium or



1 cooperative housing project in which the person lives as the
2 person's primary residence."

3 PART II

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

7 "§235- Tax credit to promote the extension of long-term
8 residential ground leases. (a) For taxable years beginning
9 after December 31, 2014, any taxpayer that is the lessor of a
10 long-term residential ground lease subject to section 666- (c)
11 that properly files an income tax return for the taxable year
12 may claim an income tax credit under this section against the
13 taxpayer's net income tax liability, if any, imposed by this
14 chapter for the taxable year in which the credit is properly
15 claimed.

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



1 for the specified term and the continued occupation of the
2 property by the lessee for each year that the credit is claimed.

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

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

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

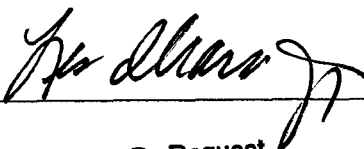
17 (f) Claims for the tax credit under this section,
18 including any amended claims, shall be filed on or before the
19 end of the twelfth month following the taxable year for which
20 the credit may be claimed."

21 SECTION 4. New statutory material is underscored.



1 SECTION 5. This Act shall take effect on July 1, 2013;
2 provided that part II of this Act shall apply to taxable years
3 beginning after December 31, 2014.

4

INTRODUCED BY: 
By Request



S.B. NO. 218

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 taxable years beginning after 12/31/2014 for rental income collected from property subject to an extension of thirty years or more of a long-term residential ground lease.

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

