

JAN 18 2013

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# A BILL FOR AN ACT

RELATING TO LEASEHOLD CONVERSION.

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

1           SECTION 1. The legislature finds that ownership of  
2 commercial and industrial land in Hawaii is concentrated in the  
3 hands of a few landowners under the same oligopoly identified in  
4 earlier legislative actions and court review. According to the  
5 legislative reference bureau's report no. 5 in 2003, since a  
6 majority of urban industrial properties in this State are  
7 leasehold tenancy, the market valuations of these properties  
8 have been affected by the speculative and investment markets.  
9 The legislature finds landowners of commercial and industrial  
10 ground leases have raised rents on the basis of these artificial  
11 market values. The legislature further finds that as a result,  
12 leasehold tenancy has created disincentives for lessees to  
13 maintain, repair, renovate, or replace the improvements they  
14 have built on their ground leases such that the economy of  
15 Hawaii has been, and continues to be, harmed.

16           The legislature finds that Hawaii has an exceptionally high  
17 rate of leasehold ownership, with approximately sixty per cent  
18 of commercial and industrial land under leasehold as of 2003.



1 The legislature further finds that the continuing system of  
2 leasehold ownership frustrates necessary and rational economic  
3 development in Hawaii because the leasehold system defies the  
4 national trend in industrial and commercial real estate,  
5 adversely affects amortization of loans, and deprives ordinary  
6 citizens of the privilege of building equity and bequeathing  
7 wealth to subsequent generations.

8 The legislature further finds that action taken to support  
9 economic development is within its proper legislative powers and  
10 is an obligation to the public that it must meet.

11 The purpose of this Act is to establish a program for the  
12 mandatory lease-to-fee conversion of business properties in the  
13 same manner that the legislature addressed the problem of the  
14 residential leasehold system.

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

18 "CHAPTER

19 BUSINESS LEASEHOLDS

20 § -1 **Definitions.** As used in this chapter, unless the  
21 context otherwise requires:

22 "Business lot":



- 1           (1) Means a lot zoned for business, commercial, or
- 2                    industrial use and leased for and actually placed in a
- 3                    business, commercial, or industrial use;
- 4           (2) Shall not include any lot zoned resort, agriculture,
- 5                    conservation, preservation, apartment, or residential,
- 6                    even if the lot is used for an income generating
- 7                    enterprise; and
- 8           (3) Includes a lot zoned for mixed use if leased
- 9                    exclusively for and actually placed in business,
- 10                   commercial, or industrial resort use.

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

13           "Designated business lot" means a business lot, the leased  
14 fee interest in which has been designated for acquisition by the  
15 corporation.

16           "Development tract" means a single contiguous area of real  
17 property not less than five acres in size that has been  
18 developed and subdivided into business lots, streets, and other  
19 common or public areas. Two or more pieces of real property  
20 shall be considered a single contiguous area if the real  
21 property would be contiguous except for the interposition or  
22 existence of a street, stream, or other like interference.



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

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

15 "Fee simple owner" and "fee owner" mean the person who owns  
16 the fee simple title to the land that is leased, including a  
17 life tenant with a remainder over, vested or contingent, and a  
18 holder of a defeasible estate, and the holder's heirs,  
19 successors, legal representatives, and assigns.

20 "Lease" means a conveyance of land or an interest in land,  
21 by a fee simple owner as lessor, or by a lessee or sublessee as  
22 sublessor, to any person, in consideration of a return of rent



1 or other remuneration, for a term of twenty years or more,  
2 measured from the initial date of the conveyance and including  
3 any period for which the lease may be extended or renewed at the  
4 option of the lessee.

5 "Leased fee" and "leased fee interest" means all of the  
6 interests of the fee simple owner, lessor, and all legal and  
7 equitable owners of the land that is leased other than the  
8 lessee's leasehold interest.

9 "Legal and equitable owner" means the fee simple owner and  
10 all persons having legal or equitable interests in the fee or in  
11 the lessor's leasehold estate, including mortgagees, developers,  
12 lienors, and sublessors, and their respective heirs, successors,  
13 legal representatives, and assigns.

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

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

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

21 "Offsite improvements" means all physical improvements,  
22 including but not limited to roads, sewer lines, sewage



1 treatment plants, gutters, curbs, sidewalks, fire hydrants,  
2 street lights, land dedicated for public purposes and  
3 underground electric cables, constructed or placed in a  
4 subdivision off the lots intended for occupancy, which  
5 improvements are to be used in common by occupants of all lots  
6 adjoining the improvements or by the occupants of all lots for  
7 whose benefit the improvements have been constructed or placed.

8 "Onsite improvements" means all physical improvements  
9 placed on a business lot intended for occupancy that are for the  
10 benefit of occupants of that lot.

11 "Owner's basis" means the value of the lessor's leased fee  
12 interest in a lot that would apply if the interest was normally  
13 traded on an open market. The fair market value of the owner's  
14 basis shall be established to provide the lessor with just  
15 compensation for the lessor's interests in the lot and shall  
16 take into consideration every interest and equity of the lessee  
17 in establishing that market value. The value may be determined  
18 by either of the following methods, or any other method that is  
19 normally used by qualified appraisers in establishing the fair  
20 market value of a lessor's leased fee interest in land:

21 (1) The sum of:



- 1           (A) The future rental income stream for the lot for
- 2                   the term of the lease discounted to present worth
- 3                   from the expiration date of the lease; and
- 4           (B) The value of the lessor's reversionary interest
- 5                   in the lot discounted to present worth from the
- 6                   expiration date of the lease. The discount rate
- 7                   shall be established by the corporation as
- 8                   reasonable and fair to the lessor and lessees;
- 9                   provided that the discount rate may be modified
- 10                  by mutual agreement of the lessor, lessee, and
- 11                  the corporation; or
- 12       (2) The current fair market value of the lot, valued as if
- 13                  it were a fee simple lot and as if the fee title were
- 14                  unencumbered, and excluding onsite improvements,
- 15                  established by a market data approach using comparable
- 16                  sales, less the following:
- 17                (A) The value of the lease, including any rights
- 18                          therein, if any, that accrues to the lessee;
- 19                (B) The percentage of the general enhancement of the
- 20                          development tract that has been paid for or
- 21                          contributed directly or indirectly by the lessee;



- 1 (C) The current replacement cost of that portion of  
2 existing offsite improvements, including overhead  
3 and profit at prevailing rates, that were paid  
4 for or otherwise contributed, directly or  
5 indirectly, by the lessee;
- 6 (D) The percentage of the general enhancement of the  
7 development tract and the lot caused by the  
8 onsite improvements on the lot paid for, or  
9 contributed, directly or indirectly, by the  
10 lessee;
- 11 (E) The amount, not otherwise deducted herein,  
12 allocated to the lot, that was paid for or  
13 otherwise contributed, directly or indirectly by  
14 the original lessee, computed at prevailing rates  
15 for overhead and profit in developing the  
16 development tract established by existing  
17 practice in the community; and
- 18 (F) The amount for fees and costs that would  
19 ordinarily be borne by the lessor in transferring  
20 the leased fee interest to a lessee, including  
21 but not limited to commissions, other costs of  
22 sale, and similar fee;





1 provided that the values established by any one of the  
2 foregoing shall not be duplicated in any one of the  
3 other provisions.

4 § -2 **Applicability.** This chapter applies to all lands  
5 leased as business lots that are owned or held privately. This  
6 chapter is not intended to supersede or preclude any other  
7 remedy at law available to business lot lessees or the State,  
8 including those available under chapter 480.

9 § -3 **No estoppel or waiver.** The rights granted to  
10 lessees by this chapter shall be effective, notwithstanding any  
11 provision in any lease or contract to the contrary. No lessee  
12 shall be estopped by any covenant, term, condition, or contract,  
13 however worded, from claiming the rights granted to the lessee  
14 by this chapter or otherwise be deemed to have waived any  
15 rights. Any provision in any lease or contract contrary to the  
16 intent or purpose of this chapter is void.

17 § -4 **Trusts and estates.** The rights granted to lessees  
18 by this chapter shall be effective, notwithstanding any  
19 condition or provision to the contrary in any instrument  
20 creating any life tenancy, defeasible fee, estate, or trust,  
21 regardless of whether the tenancy, fee, estate, or trust was in  
22 effect prior to July 1, 2013, or is created thereafter. The



1 life tenant, holder, officer, or trustee of any tenancy,  
2 defeasible fee, estate, or trust in effect prior to July 1,  
3 2013, shall perform all acts required of the life tenant,  
4 holder, officer, or trustee by this chapter. Every instrument  
5 creating the life tenancy, defeasible fee, estate, or trust in  
6 existence on July 1, 2013, or thereafter executed shall be  
7 construed in conformity with the intent and purpose of this  
8 chapter. No trustee, officer, or agent of a lessor or other  
9 legal or equitable owner shall, while acting pursuant to this  
10 chapter, be deemed to be acting in bad faith or to have  
11 committed a breach of trust.

12 § -5 **Administration of chapter.** The corporation shall  
13 administer this chapter.

14 § -6 **Corporation's duties, generally.** In addition to  
15 any other duty prescribed by law and this chapter, the  
16 corporation shall:

- 17 (1) By December 31, 2013, adopt, in accordance with  
18 chapter 91, all rules necessary to effectuate the  
19 purposes of this chapter;
- 20 (2) Enforce this chapter and the rules adopted pursuant  
21 thereto;



- 1           (3) Subject to chapter 76, appoint and remove any  
2           administrative, technical, and clerical staff as it  
3           may require and prescribe their powers and duties;  
4           except that the corporation may appoint, without  
5           regard to chapter 76, one or more appraisers on a  
6           part-time, contractual basis for the purposes set  
7           forth in this chapter;
- 8           (4) Establish reasonable fees to be assessed and collected  
9           from lessees for the services of any appraiser;
- 10          (5) Disseminate information and render assistance to  
11          lessees of business lots for the effective  
12          implementation of this chapter;
- 13          (6) Conduct an investigation of any written complaint or  
14          whenever it appears to the corporation that this  
15          chapter has been or is being violated. In any  
16          investigation, the corporation may examine the books,  
17          accounts, records, and files of any person connected  
18          with the matter under investigation and conduct  
19          hearings. If the corporation finds from satisfactory  
20          evidence that any person has violated or is violating  
21          this chapter, it may order the person to cease and  
22          desist from continuing the violation or engaging



1           therein or doing any act or acts in furtherance  
2           thereof and, where necessary, it may bring an action  
3           in the name of the State in any court of competent  
4           jurisdiction for enforcement of its orders;

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

7           (8) Make and execute contracts and other instruments  
8           necessary or convenient to the exercise of the powers  
9           of the corporation;

10          (9) From time to time, require the lessors of leased  
11          business lots and all fee owners and legal and  
12          equitable owners of lots to provide information that  
13          the corporation may reasonably require in connection  
14          with the administration of this chapter; and

15          (10) Do all things necessary and convenient to carry out  
16          the powers expressly conferred upon it by this  
17          chapter.

18          §   -7   **Corporation members, officers, or employees;**  
19   **prohibited interests.** No member of the corporation or any  
20   officer or employee administering this chapter shall acquire any  
21   interest, direct or indirect, in the ownership or development of  
22   any development tract other than by gift, devise, or



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

18 § -8 Development tract subject to conversion of business  
19 lots. The leasehold interest in business lots in a development  
20 tract shall be subject to conversion to fee simple under this  
21 chapter if the development tract was:



1 (1) Developed and subdivided into business lots occupied  
2 by lessees under leases executed before July 1, 2013;  
3 or

4 (2) Developed and subdivided or partially developed into  
5 business lots occupied or to be occupied by lessees  
6 under leases executed after June 30, 2013.

7 § -9 Designation for acquisition of leased fee interest

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

16 (b) If the corporation finds that the necessary minimum  
17 number or percentage of applicants is eligible to purchase, the  
18 corporation shall hold a public hearing in the county in which  
19 the subject development tract is located. The corporation shall  
20 give public notice of the time and place of the public hearing  
21 on at least three different days, the last notice being not less  
22 than five days before the date of hearing.



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

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

9 Additionally, the corporation shall not designate the  
10 leased fee interest in any business lot in the development tract  
11 for acquisition if the corporation finds that:

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

15 (2) The acquisition of the leased fee interests in the  
16 subject business lots will not effectuate the purpose  
17 of this chapter.

18 (d) The designation under subsection (c) shall authorize  
19 the corporation to commence the acquisition of the leased fee  
20 interests in the designated business lots in the development  
21 tract through the exercise of the power of eminent domain.



1           §   -10   **Eligibility for purchase.**   (a)   No application to  
2 purchase the leased fee interest in a business lot in a  
3 development tract shall be accepted and no sale of a leased fee  
4 interest shall be made to any lessee unless the lessee meets the  
5 following requirements:

- 6           (1)   Holds a lease on the lot; provided that for the  
7                purposes of this paragraph, "lease" shall not include  
8                a sublease;
- 9           (2)   Has legal title to a structure situated on the  
10               business lot;
- 11          (3)   Has a letter of credit, certificate of deposit, proof  
12               of funds, or approved application from a lending  
13               institution demonstrating that the lessee will be able  
14               to promptly pay the corporation for the leased fee  
15               interest in the business lot;
- 16          (4)   Submits an application in good faith in a form  
17               acceptable to the corporation;
- 18          (5)   Executes a contract for the purchase of the leased fee  
19               interest from the corporation if the corporation  
20               acquires the interest;
- 21          (6)   Does not own in fee simple any other land zoned to  
22               permit any business, commercial, or industrial use





1           within the county in which the business lot is  
2           located. A person shall be deemed to "own" land if  
3           the person, the person's spouse, or both, own land,  
4           unless they are separated and living apart under a  
5           decree of a court of competent jurisdiction; and

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

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

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

21          § -11 **Deposits by lessees.** (a) The corporation shall  
22          require the submission of a deposit by a lessee determined

1 eligible by the corporation to purchase the leased fee interest  
2 in a business lot under this chapter. The amount of the deposit  
3 shall be established by rule. All interest earned on the  
4 deposit submitted by a lessee shall accrue to the lessee.

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

12 § -12 Preliminary negotiation required. (a) Within  
13 twenty days of designating the leased fee interests in business  
14 lots for acquisition, the corporation shall request the lessor  
15 and the eligible lessees to negotiate the just compensation that  
16 the lessees shall pay to the lessor to acquire the lessor's  
17 interests in the designated business lots.

18 If no agreement is reached within sixty days after the  
19 request to negotiate, the parties shall simultaneously exchange  
20 written final offers together with any appraisals, other  
21 documents, and any other expert opinions on which their  
22 negotiating positions were based. Copies of the final offers



1 and related documents shall be submitted to the corporation and  
2 the corporation may use the information in determining, prior to  
3 commencing condemnation proceedings, the probability that the  
4 lessees will be able to meet the financial requirements of  
5 section -10(a)(3).

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

9 (c) Any offers, appraisals, documents, or expert opinions  
10 giving a value of the lessor's interest in the designated  
11 business lots that were prepared by a party for use in  
12 preliminary negotiations as provided for in this section, for  
13 setting qualification amounts pursuant to section -10(a)(3),  
14 or for negotiations to determine the just compensation to  
15 acquire the lessor's interest in the designated business lots  
16 shall not be discoverable, usable, or admissible by an opposing  
17 or adverse party in any eminent domain proceeding brought under  
18 this chapter.

19 § -13 **Exercise of power of eminent domain.** Within  
20 twelve months after the designation of the leased fee interests  
21 in the business lots for acquisition, the corporation shall  
22 acquire through voluntary action of the parties or institute



1 eminent domain proceedings to acquire the designated leased fee  
2 interests. The corporation shall exercise its power of eminent  
3 domain in the same manner as provided in chapter 101. If the  
4 leased fee interests to all of the designated business lots are  
5 not acquired or eminent domain proceedings are not instituted  
6 within the twelve-month period, the corporation shall reimburse  
7 the fee owner, lessor, and legal and equitable owners of the  
8 designated business lots their actual out-of-pocket expenses of  
9 appraisal, survey, and attorney fees; provided that:

10 (1) If the leased fee interests in all of the designated  
11 business lots are not acquired or eminent domain  
12 proceedings are not instituted within the twelve-month  
13 period as a result of a lessee's dismissal,  
14 discontinuance, or withdrawal from the eminent domain  
15 proceedings or failure to purchase the leased fee  
16 interest condemned because of the lessee's inability,  
17 failure, or refusal to comply with any provision under  
18 this chapter, then the lessee, not the corporation,  
19 shall be solely responsible to reimburse the fee  
20 owner, lessor, and legal and equitable owners for  
21 their respective prorated costs that they may have



1           incurred as a result of the designation and  
2           condemnation; and  
3           (2) If, during the twelve-month period, the leased fee  
4           interests in some of the designated business lots were  
5           acquired by the corporation through voluntary sale by  
6           the lessor, the acquired leased fee interests shall  
7           remain in the ownership of the corporation or, if the  
8           interests were subsequently purchased by the lessee,  
9           in the ownership of the lessee.

10          §   -14   **Eminent domain trial.** The parties to the eminent  
11 domain action brought under this chapter shall be the  
12 corporation as plaintiff and the lessors and all other necessary  
13 parties as defendants. The corporation shall not have the  
14 burden of proof in establishing the fair market value of the  
15 leased fee interest being acquired. All parties, including the  
16 corporation, shall be given an opportunity to present evidence  
17 of the fair market value of the leased fee interest being  
18 acquired.

19          §   -15   **Compensation.** The compensation to be paid for the  
20 leased fee interest in a designated business lot shall be the  
21 owner's basis as defined in section    -1. The compensation



1 shall be determined as of the date of the summons of the  
2 complaint to institute the eminent domain action.

3       §   -16   **Interest acquired.** (a) The interest to be  
4 acquired by the corporation in a business lot under this chapter  
5 shall be all of the right, title, and interest of the fee owner  
6 and, if any, the lessor and all legal and equitable owners in  
7 the designated business lot, subject to all covenants,  
8 conditions, easements, reservations, and restrictions of record  
9 running with the land or contained in the agreement of sale,  
10 deed, or other conveyance held by the fee owner, lessor, and  
11 legal and equitable owners, or permitted or suffered by lessees  
12 of existing business lot leases that are not inconsistent with  
13 the intent of this chapter. The acquisition shall terminate all  
14 the right, title, and interest of the fee owner, lessor, and all  
15 legal and equitable owners, whether the interest be a remainder,  
16 vested or contingent, a reversion, or other beneficial interest  
17 in the property, present or prospective.

18       (b) If the leasehold interest in the designated business  
19 lot is subject to any mortgage, lien, or encumbrance suffered or  
20 permitted by the lessee, including rights arising through  
21 divorce, marriage, or assignment, the purchase of the leased fee  
22 interest by the lessee shall in no manner affect or impair the



1 mortgage, lien, or encumbrance or the security afforded thereby  
2 to the holder thereof, and the leasehold shall continue,  
3 notwithstanding the purchase of the leased fee by the lessee,  
4 for the purpose and to extent necessary to avoid any impairment  
5 of the leasehold security, unless the holder of the leasehold  
6 mortgage, lien, or encumbrance shall in writing consent to the  
7 transfer thereof to the fee as herein provided. Upon the  
8 written consent by the holder thereof, each mortgage, lien, or  
9 encumbrance to which the leasehold is subject and to which the  
10 consent refers shall be transferred to and shall bind the fee  
11 acquired by the lessee, and shall thereafter continue in full  
12 force and effect as a mortgage, lien, or encumbrance of the fee  
13 acquired by the lessee, in the same order and priority among the  
14 mortgages, liens, and encumbrances so transferred to the fee as  
15 the same applied to and bound the lessee's immediate, previous  
16 leasehold interest.

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

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

22 Notwithstanding any contrary provision in any contract or lease,



1 a developer or other person entitled to share in the lease  
2 rental proceeds shall share in the compensation paid by the  
3 corporation to the extent of the developer's or other person's  
4 interest as may be determined by agreement of those entitled to  
5 share in the compensation paid by the corporation or, in the  
6 absence of such agreement, pursuant to chapter 658A.

7 § -18 **Compulsory or involuntary conversion.** It is the  
8 intent of the legislature, within the meaning of section 1033 or  
9 section 1231 of the Internal Revenue Code or the applicable  
10 provisions of chapter 235, as well as all other statutes, rules,  
11 regulations, administrative orders, and legal interpretations  
12 within the federal and state governments relating to taxation,  
13 that any conveyance of title to property by a fee owner to the  
14 corporation under this chapter shall constitute a compulsory or  
15 involuntary conversion as a result of the exercise of the power  
16 of condemnation or the threat of imminence thereof, and that the  
17 fee owner shall not be deemed, by reason of any provision of  
18 this chapter or the execution by the fee owner of leases to the  
19 property and other properties subsequent to June 30, 2013, to  
20 hold the property primarily for sale to customers in the  
21 ordinary course of trade or business.





1           §   -19   **Purchase of leased fee interest.** (a) The lessee  
2 of a designated business lot within a development tract who has  
3 applied to and been determined by the corporation as eligible to  
4 purchase the leased fee interest in the lot shall purchase the  
5 leased fee interest from the corporation within sixty days of  
6 acquisition of the interest by the corporation. The lessee  
7 shall pay to the corporation the entire cost paid by the  
8 corporation to acquire the leased fee interest in the business  
9 lot. The purchase contract required by section   -10(a)(5)  
10 shall include this requirement.

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

14           (1) The lessee shall pay to the corporation the lessee's  
15 pro rata share of all direct costs incurred by the  
16 corporation in the acquisition of the leased fee  
17 interests in the designated business lots within the  
18 development tract, including costs of appraisal,  
19 publication, and survey, and the corporation may take  
20 whatever action it deems necessary to collect the  
21 costs. In addition, if the lessee intentionally  
22 breached the purchase contract with the corporation,



1 the corporation shall be entitled to any available  
2 remedy; and

3 (2) The leased fee interest in the business lot shall  
4 revert to the fee simple owner, and the lessee shall  
5 be liable to the fee simple owner for the pro rata  
6 share of the cost of the owner in the proceedings by  
7 the corporation to acquire the leased fee interest.

8 § -20 **Quitclaim deeds.** Unless otherwise provided by  
9 law, the corporation shall issue quitclaim deeds whenever it  
10 conveys the leased fee interest in a designated business lot to  
11 a lessee under this chapter. In no instance shall the  
12 corporation be considered a guarantor or warrantor of the  
13 condition and quality of the property upon the issuance of any  
14 quitclaim deed or lease.

15 § -21 **Termination of proceedings when eligible**  
16 **applicants fall below minimum number or percentage.** If, after  
17 the corporation designates the leased fee interests in business  
18 lots for acquisition, the number of eligible applicants for the  
19 acquisition falls below the minimum number or percentage  
20 established under section -9, the corporation shall terminate  
21 all proceedings to acquire the designated leased fee interests.  
22 Upon the termination, the designation shall be void, and the fee



1 simple owner, lessor, and legal and equitable owners shall be  
2 reimbursed by the corporation for their costs incurred for  
3 proceedings under this chapter.

4 The corporation shall require all lessees who were parties  
5 to the proceedings to pay the corporation the entire amount  
6 reimbursed to the fee simple owner, lessor, and legal and  
7 equitable owners.

8 § -22 **Not for profit; no public funds.** (a) It is  
9 declared to be the policy of the State that the corporation  
10 shall carry out its responsibilities under this chapter in an  
11 efficient manner so as to enable it to fix the sale price of the  
12 leased fee interest in a designated business lot at the lowest  
13 possible amount consistent with the purpose of this chapter and  
14 that the corporation shall not administer this chapter for  
15 profit or as a source of revenue to the State. To this end, the  
16 corporation shall fix the sale price at an amount no higher than  
17 it shall find to be necessary to produce revenues that shall be  
18 sufficient:

19 (1) To pay the acquisition price of the leased fee  
20 interest in designated business lots or reimburse the  
21 corporation for any funds advanced to pay the  
22 acquisition price; and



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

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

10           (1) Passed through the corporation from lessees to lessors  
11 for the purchase of the leased fee interests in  
12 designated business lots or, if the leased fee  
13 interests are not acquired, payment of costs incurred  
14 by lessors; or

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

19           § -23 **Exemption from taxation and assessments.** The  
20 corporation and property acquired by it under this chapter shall  
21 be exempt from any and all taxes and assessments.



1           §   -24   **Business lot conversion revolving fund.**  There  
2 shall be created a business lot conversion revolving fund.  All  
3 moneys received or collected by the corporation under this  
4 chapter shall be deposited in the revolving fund.  Expenditures  
5 by the corporation to administer or enforce this chapter shall  
6 be made from the revolving fund.

7           §   -25   **Penalty.**  Any person who violates this chapter  
8 shall be fined not more than \$5,000 nor less than \$1,000,  
9 imprisoned not more than one year, or both.  All fines collected  
10 shall be deposited in the business lot conversion revolving  
11 fund."

12           SECTION 3.  This Act shall take effect on July 1, 2013.

13

INTRODUCED BY: *Shiranne Chun Alcala*  
*By Request*



**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.*

