
A BILL FOR AN ACT

RELATING TO PUBLIC LAND LEASING.

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

1 SECTION 1. The legislature finds that affordable housing
2 provides the bedrock for stability in our lives and our
3 community. With the current crisis in housing availability, the
4 need to ensure facilitated development of affordable housing is
5 paramount to ensuring a stable future for Hawaii.

6 The legislature also finds that to secure federal funding
7 through the Federal Housing Administration for affordable
8 housing, a land lease must be for at least seventy-five years
9 and current Hawaii law does not mandate that land leases meet
10 that requirement when needed.

11 The purpose of this Act is to require the extension of land
12 leases to seventy-five years for the purposes of meeting Federal
13 Housing Administration requirements for affordable housing
14 funding.

15 SECTION 2. Section 171-36, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:



1 "(a) Except as otherwise provided, the following
2 restrictions shall apply to all leases:

3 (1) Options for renewal of terms are prohibited;

4 (2) No lease shall be for a longer term than sixty-five
5 years, except in the case of a residential leasehold,
6 which may provide for an initial term of fifty-five
7 years with [~~the privilege of~~] a mandatory extension to
8 meet the requirements of the Federal Housing
9 Administration, Federal National Mortgage Association,
10 Federal Land Bank of Berkeley, Federal Intermediate
11 Credit Bank of Berkeley, Berkeley Bank for
12 Cooperatives, or Veterans Administration requirements;
13 provided that the [~~aggregate of the initial term and~~
14 ~~extension shall in no event~~] extension shall not
15 exceed seventy-five years;

16 (3) No lease shall be made for any land under a lease
17 which has more than two years to run;

18 (4) No lease shall be made to any person who is in arrears
19 in the payment of taxes, rents, or other obligations
20 owing the State or any county;



1 (5) No lease shall be transferable or assignable, except
2 by devise, bequest, or intestate succession; provided
3 that with the approval of the board of land and
4 natural resources, the assignment and transfer of a
5 lease or unit thereof may be made in accordance with
6 current industry standards, as determined by the
7 board; provided further that prior to the approval of
8 any assignment of lease, the board shall have the
9 right to review and approve the consideration to be
10 paid by the assignee and may condition its consent to
11 the assignment of the lease on payment by the lessee
12 of a premium based on the amount by which the
13 consideration for the assignment, whether by cash,
14 credit, or otherwise, exceeds the depreciated cost of
15 improvements and trade fixtures being transferred to
16 the assignee; provided further that with respect to
17 state agricultural leases, in the event of foreclosure
18 or sale, the premium, if any, shall be assessed only
19 after the encumbrances of record and any other
20 advances made by the holder of a security interest are
21 paid;



- 1 (6) The lessee shall not sublet the whole or any part of
2 the demised premises except with the approval of the
3 board; provided that prior to the approval, the board
4 shall have the right to review and approve the rent to
5 be charged to the sublessee; provided further that in
6 the case where the lessee is required to pay rent
7 based on a percentage of its gross receipts, the
8 receipts of the sublessee shall be included as part of
9 the lessee's gross receipts; provided further that the
10 board shall have the right to review and, if
11 necessary, revise the rent of the demised premises
12 based upon the rental rate charged to the sublessee
13 including the percentage rent, if applicable, and
14 provided that the rent may not be revised downward;
- 15 (7) The lease shall be for a specific use or uses and
16 shall not include waste lands, unless it is
17 impractical to provide otherwise;
- 18 (8) Mineral and metallic rights and surface and ground
19 water shall be reserved to the State; and
- 20 (9) No lease of public lands, including submerged lands,
21 nor any extension of any such lease, shall be issued



1 by the State to any person to construct, use, or
2 maintain a sunbathing or swimming pier or to use the
3 lands for such purposes, unless such lease, or any
4 extension thereof, contains provisions permitting the
5 general public to use the pier facilities on the
6 public lands and requiring that a sign or signs be
7 placed on the pier, clearly visible to the public,
8 which indicates the public's right to the use of the
9 pier. The board, at the earliest practicable date,
10 and where legally possible, shall cause all existing
11 leases to be amended to conform to this paragraph.
12 The term "lease", for the purposes of this paragraph,
13 includes month-to-month rental agreements and similar
14 tenancies."

15 SECTION 3. Section 171-73, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§171-73 Term, rent, and other conditions of residential
18 leases. Residential leases made by the board of land and
19 natural resources may be for an initial term of fifty-five years
20 with [~~the privilege of~~] a mandatory extension to meet Federal
21 Housing Administration requirements, provided [~~the aggregate of~~



1 ~~the initial terms and extension shall in no event~~ that the
2 extension shall not exceed seventy-five years. It may contain
3 [~~such~~] terms and conditions as the board may in its discretion
4 determine, except that the following shall in any event be
5 complied with in each residential lease:

6 (1) Rent and taxes. The annual rent shall be not less
7 than an amount representing a fair return on the value
8 of the premises at the inception of the rental period
9 under the lease, which value shall be determined by
10 appraisers. The lessee shall pay all real property
11 taxes, assessments for the lessee's pro rata share of
12 the costs of the improvements of the tract in which
13 the land is located, and [~~such~~] any other charges made
14 against or levied upon the lessee's premises. "Value
15 of premises" as used in this section means the fair
16 market value of the raw land, including [~~in such~~] the
17 value of the pro rata share of the cost of
18 improvements, only if the lessee has not already been
19 assessed or has not already paid the lessee's pro rata
20 share thereof, or if the State has not assumed the
21 costs.



- 1 (2) Construction of residence. Each residential lease
2 shall contain requirements that the lessee construct a
3 residence upon the premises, pursuant to plans and
4 specifications approved by the board and using a
5 licensed contractor, within [~~such~~] a time and having
6 [~~such~~] a minimum value or ground floor area as may be
7 determined by the board in its discretion.
- 8 (3) Use. Upon the completion of improvements upon the
9 premises, the lessee shall use and occupy the premises
10 as the lessee's residence and shall not rent or use
11 for any business purposes the whole or any part of the
12 premises, except with the written consent of the
13 board.
- 14 (4) Alienation. Each residential lease shall contain
15 conditions prohibiting the lessee from subletting or
16 parting with the possession of the whole or any part
17 of the premises and from selling, assigning,
18 transferring, or otherwise disposing of or
19 encumbering, except by way of mortgage as hereinafter
20 permitted, any interest in the lease or any



1 improvements erected on the premises, except with the
2 written consent of the board.

3 (5) Right of purchase. Each residential lease shall also
4 state that no right or privilege of purchasing the fee
5 title to the land demised shall be created by the
6 lease, except as provided in section 171-79,
7 notwithstanding any other provision of the law to the
8 contrary.

9 (6) Construction and mortgages. Each residential lease
10 shall provide that the lessee may mortgage the lease
11 and improvements only for the purpose of financing the
12 construction of a residence upon the premises or,
13 after the requirement of construction of a residence
14 upon the premises has been fulfilled, for the purpose
15 of financing the purchase of the lease and
16 improvements. The mortgages shall be made only to
17 recognized lending institutions and may provide for
18 foreclosure and for sale at the foreclosure to any
19 purchaser, without regard to whether the purchaser at
20 the sale is qualified or disqualified to take a
21 residential lease under this part. The mortgagee's



1 interest in any such mortgage shall be freely
2 assignable.

3 (7) Mortgage qualification. The foregoing provisions to
4 the contrary notwithstanding, the board is authorized
5 from time to time, upon the issuance of any such lease
6 to adopt or modify or eliminate any provision
7 contained in sections 171-70 to 171-83, to the extent
8 necessary to qualify the lease for mortgage lending or
9 guaranty purposes with the Federal Housing
10 Administration, Federal National Mortgage Association,
11 and Veterans Administration, and their respective
12 successors and assigns."

13 SECTION 4. Section 201H-58, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§201H-58[+] Leases; self-help housing. (a) The
16 [+]corporation[+] may lease parcels that it deems suitable for
17 affordable housing at \$1 per year for up to fifty years to
18 organizations or community trusts to develop the parcel with
19 ownership units through self-help development.

20 (b) The [+]corporation[+] may extend or modify the fixed
21 rental period of the lease or extend the term of the lease[-],



1 and shall extend the lease to no more than seventy-five years to
2 meet Federal Housing Administration requirements for affordable
3 housing.

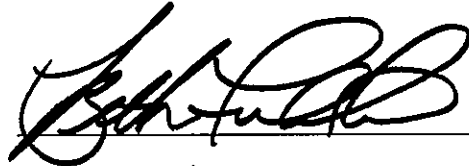
4 (c) Parcels leased under this section may be transferred
5 or assigned by devise, bequest, or intestate succession, and may
6 be sublet with the approval of the [+]corporation[+]."

7 SECTION 5. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect upon its approval.

10

INTRODUCED BY:





Takashi Ono









Fubi Pouch







H.B. NO. 2074

Report Title:

Future Caucus Package; Affordable Housing; Federal Housing Administration; Public Land Lease

Description:

Requires the extension of public land leases to seventy-five years for affordable housing projects when Federal Housing Administration requirements need to be met for project funding.

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