
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 to secure federal
2 funding through the Federal Housing Administration for
3 affordable housing, a land lease must be for at least seventy-
4 five years and current Hawaii law does not mandate that land
5 leases meet that requirement when needed.

6 The purpose of this Act is to require the extension of land
7 leases to seventy-five years for the purposes of meeting Federal
8 Housing Administration requirements for affordable housing
9 funding. Additionally, this Act requires that contracts on state
10 leased land be subject to the requirements of Chapter 104,
11 Hawaii Revised Statutes.

12 SECTION 2. Section 171- , Hawaii Revised Statutes, is
13 amended by adding a new section to read as follows:

14 "All contracts in excess of \$2,000 for development,
15 construction, renovation, or maintenance upon state leased land,
16 unless otherwise exempt, are subject to the requirements of
17 Chapter 104, Hawaii Revised Statutes."



1 SECTION 3. Section 171-36, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

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

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

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



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



1 after the encumbrances of record and any other
2 advances made by the holder of a security interest are
3 paid;

4 (6) The lessee shall not sublet the whole or any part of
5 the demised premises except with the approval of the
6 board; provided that prior to the approval, the board
7 shall have the right to review and approve the rent to
8 be charged to the sublessee; provided further that in
9 the case where the lessee is required to pay rent
10 based on a percentage of its gross receipts, the
11 receipts of the sublessee shall be included as part of
12 the lessee's gross receipts; provided further that the
13 board shall have the right to review and, if
14 necessary, revise the rent of the demised premises
15 based upon the rental rate charged to the sublessee
16 including the percentage rent, if applicable, and
17 provided that the rent may not be revised downward;

18 (7) The lease shall be for a specific use or uses and
19 shall not include waste lands, unless it is
20 impractical to provide otherwise;



1 (8) Mineral and metallic rights and surface and ground
2 water shall be reserved to the State; and
3 (9) No lease of public lands, including submerged lands,
4 nor any extension of any such lease, shall be issued
5 by the State to any person to construct, use, or
6 maintain a sunbathing or swimming pier or to use the
7 lands for such purposes, unless such lease, or any
8 extension thereof, contains provisions permitting the
9 general public to use the pier facilities on the
10 public lands and requiring that a sign or signs be
11 placed on the pier, clearly visible to the public,
12 which indicates the public's right to the use of the
13 pier. The board, at the earliest practicable date,
14 and where legally possible, shall cause all existing
15 leases to be amended to conform to this paragraph.
16 The term "lease", for the purposes of this paragraph,
17 includes month-to-month rental agreements and similar
18 tenancies."

19 SECTION 4. Section 171-73, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§171-73 Term, rent, and other conditions of residential
2 leases. Residential leases made by the board of land and
3 natural resources may be for an initial term of fifty-five years
4 with [~~the privilege of~~] a mandatory extension to meet Federal
5 Housing Administration requirements, provided [~~the aggregate of~~
6 ~~the initial terms and extension shall in no event~~] that the
7 extension shall not exceed seventy-five years. It may contain
8 [~~such~~] terms and conditions as the board may in its discretion
9 determine, except that the following shall in any event be
10 complied with in each residential lease:

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



1 value of the pro rata share of the cost of
2 improvements, only if the lessee has not already been
3 assessed or has not already paid the lessee's pro rata
4 share thereof, or if the State has not assumed the
5 costs.

6 (2) Construction of residence. Each residential lease
7 shall contain requirements that the lessee construct a
8 residence upon the premises, pursuant to plans and
9 specifications approved by the board and using a
10 licensed contractor, within [~~such~~] a time and having
11 [~~such~~] a minimum value or ground floor area as may be
12 determined by the board in its discretion.

13 (3) Use. Upon the completion of improvements upon the
14 premises, the lessee shall use and occupy the premises
15 as the lessee's residence and shall not rent or use
16 for any business purposes the whole or any part of the
17 premises, except with the written consent of the
18 board.

19 (4) Alienation. Each residential lease shall contain
20 conditions prohibiting the lessee from subletting or
21 parting with the possession of the whole or any part



1 of the premises and from selling, assigning,
2 transferring, or otherwise disposing of or
3 encumbering, except by way of mortgage as hereinafter
4 permitted, any interest in the lease or any
5 improvements erected on the premises, except with the
6 written consent of the board.

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

13 (6) Construction and mortgages. Each residential lease
14 shall provide that the lessee may mortgage the lease
15 and improvements only for the purpose of financing the
16 construction of a residence upon the premises or,
17 after the requirement of construction of a residence
18 upon the premises has been fulfilled, for the purpose
19 of financing the purchase of the lease and
20 improvements. The mortgages shall be made only to
21 recognized lending institutions and may provide for



1 foreclosure and for sale at the foreclosure to any
 2 purchaser, without regard to whether the purchaser at
 3 the sale is qualified or disqualified to take a
 4 residential lease under this part. The mortgagee's
 5 interest in any such mortgage shall be freely
 6 assignable.

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

17 SECTION 5. Section 201H-58, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "[+] §201H-58 [+] **Leases; self-help housing.** (a) The
 20 [+] corporation [+] may lease parcels that it deems suitable for
 21 affordable housing at \$1 per year for up to fifty years to



1 organizations or community trusts to develop the parcel with
2 ownership units through self-help development.

3 (b) The [~~+~~]corporation[~~+~~] may extend or modify the fixed
4 rental period of the lease or extend the term of the lease[~~-~~],
5 and shall extend the lease to no more than seventy-five years to
6 meet Federal Housing Administration requirements for affordable
7 housing.

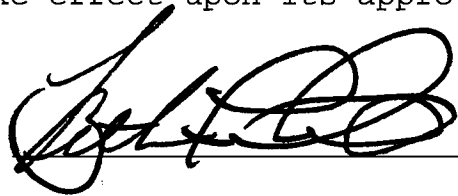
8 (c) Parcels leased under this section may be transferred
9 or assigned by devise, bequest, or intestate succession, and may
10 be sublet with the approval of the [~~+~~]corporation[~~+~~]."

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect upon its approval.

14

INTRODUCED BY:



JAN 20 2017



H.B. NO. 764

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.

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

