

ACT 242

H.B. NO. 2253-76

A Bill for an Act Relating to Residential Leaseholds.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 516-1, Hawaii Revised Statutes, is amended by

amending the definition of "owner's basis" to read:

"(14) "Owner's basis" means the current fair market value of the lot. The fair market value shall be established to provide the lessor with just compensation for his interests in the lot and shall take into consideration every interest and equity of the lessee in establishing that market value. The value shall be determined by whichever following method provides just compensation and gives the greater consideration to the lessee's interest:

- (A) The sum of: (1) the future rental income stream for the lot for the term of the lease discounted to present worth from the expiration date of the lease; and (2) the value of the lessor's reversionary interest in the lot discounted to present worth from the expiration date of the lease. The discount rate shall be based on the maximum rate of return for insured passbook demand saving account paid by the savings and loan institutions in Hawaii plus three and three-fourths per cent; provided, however, that the discount rate may be modified by mutual agreement of the lessor, lessee, and the authority; or
- (B) The current fair market value of the lot, valued as if it were a fee simple lot and as if the fee title were unencumbered, and excluding onsite improvements, established by a market data approach utilizing comparable sales, less the following:
 - (i) The value of the lease, including any rights therein, if any, which accrues to the lessee;
 - (ii) That percentage of the general enhancement of the neighborhood which has been paid for or contributed directly or indirectly by the lessee;
 - (iii) The current replacement cost of that portion of existing offsite improvements, including overhead and profit at prevailing rates, which were paid for or otherwise contributed directly or indirectly by the lessee;
 - (iv) That percentage of the general enhancement of the development tract and the lot caused by the onsite improvements on the lot paid for, or contributed, directly or indirectly, by the lessee;
 - (v) That amount, not otherwise deducted herein, allocated to the lot, which was paid for or otherwise contributed, directly or indirectly by the original lessee, computed at prevailing rates for overhead and profit in developing the development tract established by existing practice in the community; and
 - (vi) That amount for fees and costs which would ordinarily be borne by lessor in transferring such interest to lessee, including, but not limited to, attorneys' or realtors' commissions, other costs of sale, and similar fee;

provided, however, that the values established by any one of the foregoing shall not be duplicated in any one of the other provisions."

SECTION 2. Section 516-22, Hawaii Revised Statutes, is amended to read:

“Sec. 516-22 Designation of leased fee interest in all or part of development tract for acquisition. The authority may designate all or a portion of a development tract for acquisition and acquire leased fee interests in residential houselots in such development tract, through the exercise of the power of eminent domain or by purchase under the threat of eminent domain after twenty-five or more lessees or the lessees of more than fifty per cent of the residential lease lots within the development tract, whichever number is the lesser, have applied to the authority to purchase the leased fee interest in their residential leasehold lots pursuant to section 516-33 and if, after due notice and public hearing the time and place of which have been duly advertised in a newspaper of general circulation in the county in which the development tract is situated on at least three different days, the last publication being not less than five days before the date of hearing, the authority finds that the acquisition of the leased fee interest in residential houselots in all or part of the tract through exercise of the power of eminent domain or by purchase under threat of eminent domain and the disposition thereof, as provided in this part will effectuate the public purposes of this chapter.

SECTION 3. Section 516-35, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read:

“(a) If state moneys are used for the purchase of the owner’s basis, then for a period of ten years after the purchase from the authority of the leased fee interest in a residential lot, the purchaser shall not transfer any interest in the property unless he has first notified the authority in writing of his intention to do so.

The notice shall specify the purchaser’s address and upon receipt of the notice, the authority shall have the first option to purchase the land at the original purchase price of the leased fee from the authority plus ten per cent a year from the date of said original purchase up to the time of repurchase or the fair market value at the time of repurchase, whichever is lower, plus the fair market value of the improvements; provided that title to a dwelling unit and the property or lease may pass to a family member by devise or through the laws of descent, notwithstanding any qualifications set forth in section 516-33 or the rules and regulations established by the authority.

At the time of the repurchase, the fair market value of the land and the improvements shall be determined by a qualified appraiser, selected by the purchaser from a list of three appraisers provided by the authority, whose services shall be paid for by the authority; provided that the appraisal is subject to review by the authority prior to acceptance. If the purchaser disagrees with the value, he may appoint his own appraiser at his own cost and any further disagreement on the value may be resolved by negotiation or otherwise.

(b) Within sixty days after the receipt of the notice the authority shall in writing notify the purchaser at the address so specified whether it elects to exercise its option. The date of election to purchase shall constitute the date of valuation for repurchase. Nonpayment of the purchase price by the authority within ninety days from the date of election shall constitute a default and shall

void the election and terminate the right to exercise the option by the authority. If the authority refuses, or fails within the sixty-day period to reply to the offer, the purchaser may sell the fee simple interest in the property, or lease the property for a period not to exceed one year, to any person, free from any price restrictions; provided that, if the purchaser leases the property, the purchaser shall, upon expiration of the term of the lease, again comply with the requirements of subsection (a) whenever the expiration date of the term of the lease is within the ten-year period stated in subsection (a); further provided that, if the purchaser notifies the authority of his intention to sell the property, but does not sell or lease the property within two years after the date the notice was received by the authority, the purchaser must again comply with the requirements of subsection (a) if the ten-year period stated in subsection (a) has not expired.”

SECTION 4. Chapter 516, Hawaii Revised Statutes, is amended by adding a new part, to be appropriately designated and to read:

**“PART . MANDATORY ARBITRATION
OF COMPENSATION**

Sec. 516- Mandatory arbitration of compensation authorized. (a) Upon the filing of a petition by the number of lessees required by section 516-22 with the Hawaii housing authority, the authority shall request the lessor and the lessees or their designated agents to negotiate the just compensation which the lessees will pay to the lessor to acquire the lessor’s interest in the development tract. If negotiations fail then the Hawaii housing authority shall direct the lessor and lessee to submit to mandatory arbitration under chapter 658 to establish an amount of just compensation which will be paid to lessor for the lessor’s leased fee interest under section 516-24.

(b) This mandatory arbitration shall be in advance of and shall not constitute any part of any action in condemnation or eminent domain.

(c) The lessees shall jointly appoint one arbitrator, the lessor shall appoint one, and jointly these two arbitrators shall select a third arbitrator who shall be the chairman of the arbitration panel.

Sec. 516- Enforceability. Except as specifically provided in this part, mandatory arbitration under section 516- shall be conducted, and the award therein may be judicially confirmed, in conformity with the same procedures, as in other arbitrations under the law of this State. To the extent that this part is inconsistent with any other law, this part prevails.

Sec. 516- Timing of mandatory arbitration. Mandatory arbitration under this part shall be conducted and carried into effect before a condemnation action has been commenced.

Sec. 516- Arbitration procedure. (a) Unless the arbitration agreement provides otherwise the conduct of the arbitration shall be subject to the following rules.

- (1) The locale for the arbitration is the county in which the subject property, or the major portion of that property, is located.

- (2) The law of this State relating to the criteria for ascertaining just compensation, and the elements thereof, shall be applied.
- (3) The arbitration tribunal shall be the judge of the relevancy and materiality of the evidence offered, and conformity to the legal rules of evidence shall not be required.
- (4) The amount of just compensation determined by the arbitration award shall be within the range of the evidence presented by the parties.
- (5) All expenses and fees of arbitration proceedings incurred by arbitrators shall be paid one-half by lessors and one-half by lessees.
- (6) An appeal may be taken from the arbitration award establishing just compensation to the circuit court within thirty days after the award is made and served, which appeal shall, pursuant to the Hawaii Rules of Civil Procedure, determine if the award is based upon substantial evidence, not capricious or arbitrary, and upon the other factors allowed by chapter 658.

(b) The arbitration award shall be rendered not less than sixty days from the date that the arbitration panel is formed.

Sec. 516- Effect of arbitration award. The effect of the arbitration award and all matters relating thereto shall be prima facie evidence as to just compensation in any condemnation proceeding under this chapter.”

SECTION 5. Section 519-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

“(a) All leases, as defined by section 516-1(5), of residential lots, as defined by section 516-1(11), existing on June 2, 1975, or entered into thereafter, which provide for reopening of the contract for renegotiation of lease rent terms shall in the case of leases after June 2, 1975, provide the following, or in the case of leases existing on June 2, 1975, shall be construed in conformity with the following:

- (1) Such renegotiations shall not be scheduled more frequently than once every fifteen years, provided the first of such reopenings shall not be scheduled prior to the fifteenth year following the initial date of the lease; and
- (2) Upon renegotiation, the lease rent payable shall not exceed the amount derived by multiplying the “owner’s basis” by four per cent. For the purposes of this section, “owner’s basis” means the current fair market value of the lot, excluding onsite improvements, valued as if the fee title were unencumbered; less the lessee’s share, if any, of the current replacement cost of providing existing offsite improvements attributable to the land, which replacement cost shall include an overhead and profit not exceeding twenty per cent of the current replacement cost of the existing offsite improvements, or less the original lot development credit to the lessee, whichever is greater. For purposes of this section, “offsite improvements” mean all physical improvements such as, but not limited to, roads, sewer lines, sewage treatment plants, and underground utility cables, constructed or placed in a subdivision or development off the land intended for occupancy, which improvements

are to be used in common by occupants of all lands for whose benefit the improvements have been constructed or placed; and "onsite improvements" means all physical improvements placed on a residential lot intended for occupancy which improvements are for the benefit of occupants of that lot, including, but not limited to, dwelling units, garages, service buildings, stairs, walkways, driveways, walls, trees, shrubs, landscaping, and pools."

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 8. This Act shall take effect upon its approval.

(Approved June 15, 1976.)

*Edited accordingly.