

ACT 46

H. B. 13.

A Bill for an Act Relating to Residential Leaseholds, the Acquisition by the State Through Condemnation of Lands in Fee Simple and the Disposition Thereof, and the Rights of Lessees, and Amending Act 307, Session Laws of Hawaii 1967.

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

SECTION 1. This Act is hereby declared to be an urgency measure deemed necessary in the public interest within the meaning of section 11 of Article III of the Constitution of the State of Hawaii.

The following is a statement of facts constituting such urgency:

Act 307, Session Laws of Hawaii 1967, provides for the acquisition of residential leaseholds by the State through condemnation and the sale of the fee simple title of leaseholds to lessees. It also fixes some of the rights and obligations of lessors and lessees of residential houselots. The Act delays the effective date of a portion of the Act to July 1, 1969. The delayed effective date was specified, because at the time Act 307 was passed, it was the intent of the legislature to reexamine this land act during the interim and to make such amendments, as necessary, at this session of the legislature. In the interim between the last session and this session of the legislature, both the Senate and the House of Representatives authorized their committees on land to re-examine: (1) the lessor-lessee relationships established by the act; (2) the method of determining the value of the lessor and the lessee's interest in condemnation; (3) the possible tax consequences of the act; and (4) the method of sharing condemnation proceeds between the lessor and others who may be entitled to portions of the lease rentals. The interim committees have held hearings, made findings and have arrived at conclusions which require the amendment of the act. It is therefore urgent and in the public interest that the findings and conclusions of the interim committees on land be implemented as amendments to Act 307, Session Laws of Hawaii 1967, during this session.

SECTION 2. Act 307, Session Laws of Hawaii 1967, is amended as follows:

a. Amend subsection (a) of section 2 of the Act to read as follows: “(a) ‘Lease’ means a conveyance of land by a fee simple owner as lessor, or by a lessee or sublessee as sublessor, to any person, in consideration of a return of rent or other recompense, for a term, measured from the initial date of the conveyance, (1) exceeding thirty-five years (including any periods for which the lease may be extended or renewed at the option of the lessee) as to leases existing and in force on the date of approval of this act, or (2) exceeding twenty years (including any periods for which the lease may be extended or renewed at the option of the lessee) as to leases executed after the date of approval of this act.”

b. Delete subsection (h) of section 2, and insert in lieu thereof, the following subsection: “(h) ‘offsite improvements’ means all physical improvements such as, but not limited to, roads, sewer lines, sewage treatment plants, and underground electric cables, constructed or placed in a subdivision off the lots intended for occupancy, which improvements are to be used in common by occupants of all lots adjoining such improvements or by occupants of all lots for whose benefit the improvements have been constructed or placed.”

c. Delete subsection (i) of section 2 of the Act.

d. Reletter subsections (j) to (m) of section 2 as subsections (i) to (l).

e. Amend section 13 to read as follows:

“SECTION 13. **Compensation.** The compensation to be paid for the development tract shall be the current fair market value of the tract, valued as if the fee title to the tract were unencumbered and the tract were undeveloped and unsubdivided, plus the unpaid balance owing to the lessor by lessees of the lots in the tract as reimbursement for the actual offsite improvement costs paid for by the lessor; provided, that in no event shall the compensation be less than the sum of the present worth of the future rental income stream under the leases to lots in the tract and the present worth of the lessor’s reversionary interest in the leased lots. The compensation shall be determined as of the date of the designation of the development tract for acquisition.”

f. Amend the first sentence of section 18 to read as follows: “Except in case of a sale of the leased fee interest to the lessee of a residential lot under lease, no sale or lease of any residential lots shall be made by the authority unless it has published on at least two different days in a newspaper of general circulation in the county, a notice of its intent to sell or lease.”

g. Amend subsection (a) of section 23 to read as follows: “(a) If the purchaser of a fee simple title or leased fee is unable to obtain sufficient funds at reasonable rates from private lenders, the authority may, by way of mortgage, agreement of sale or other instruments to secure the indebtedness, loan to the purchaser up to ninety per cent of the purchase price.”

h. Re-number section 25 as section 26, and re-number all succeeding sections accordingly.

i. Add a new section 25 to read as follows:

"SECTION 25. Foreclosure and sale by mortgagees. If the leased fee, fee simple title or lease to a lot, purchased or acquired from the authority under this act is secured by a mortgage held by a lending institution authorized to do business as a lending institution either in the State or elsewhere in the United States, upon foreclosure of the mortgage, the leased fee, the fee simple title or the lease may be sold to any purchaser, including the holder of the mortgage, without regard to whether or not the purchaser is qualified under the provisions of this chapter to own or otherwise acquire the leased fee, the fee simple title, or the lease. The mortgage so held, and the interest so acquired by the purchaser on such foreclosure, shall be freely assignable, notwithstanding the provisions of section 24. The term, "lending institution," includes an insurer or guarantor of the obligation or condition of the mortgage, including the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State or elsewhere in the United States; provided, that the rights and powers of nongovernmental holders of mortgages shall not be any greater than those of the aforementioned federal agencies.

Notwithstanding any provision in this act to the contrary, in sales by the authority of the leased fee or the fee simple title, or in leases of lots, the authority may waive or modify any restrictions contained in this act, if such waiver or modification is necessary to enable any of aforementioned federal agencies or any lending institution authorized to do business in the State or elsewhere in the United States to participate in any loan secured by a mortgage on the leased fee, the fee simple interest or the lease; provided any such waiver or modification shall not confer any greater rights or powers in the holder than those which would be required by the Federal Housing Administration."

j. Amend the first paragraph of section 34 to read as follows: "Except as otherwise expressly provided, this part applies to all leases of residential lots existing and in force on the date of approval of this act and to all leases of residential lots executed thereafter."

k. Amend section 36 to read as follows:

"SECTION 36. Free assignability. Except as otherwise provided in section 24, a lessee may assign his lease at any time without the approval or consent of the lessor, and the assignee shall have the same rights and obligations under the lease as the original lessee; provided, that no such assignment shall be effective to transfer any interest in the lease unless the lessor has received (a) either a true executed copy of such assignment or written notice thereof, (b) a reasonable service charge, except in case of an assignment by way of mortgage or assignment to or by the Federal Housing Administration or Veterans Administration or the Federal National Mortgage Association or

a foreclosure of mortgage or assignment in lieu of foreclosure, and (c) the written undertaking of the assignee to perform all obligations of the lessee under the lease, which undertaking may be incorporated in such assignment. No such assignment shall release the assignor from liability under the lease unless the lessor consents in writing to the assignment. A consent to the assignment shall be deemed a consent to the release of the assignor from liability under the lease. The lessor shall not require payment of any money for his consent except the service charge, nor withhold such consent unreasonably. Any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of the lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on the lessee by the lease only during the period such person has possession or ownership of the leasehold estate.”

SECTION 3. This Act shall take effect upon its approval.
(Approved May 8, 1968.)