

ACT 107

S.B. NO. 3098-80

A Bill for an Act Relating to Residential Leasehold Conversion.

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

SECTION 1. The purpose of this Act is to correct the constitutional deficiencies in chapter 516, Hawaii Revised Statutes, as outlined by Judge Samuel P. King, of the U.S. District Court in his decision in *Midkiff v. Tom and Wai-Kahala Tract "H" Association* (May 8, 1979).

SECTION 2. Section 516-1, Hawaii Revised Statutes, is amended by amending the definition of "owner's basis" to read:

"(14) "Owner's basis" means the value of the lessor's leased fee interest in the lot that would apply if such interests were normally traded on an open market.

The fair market value of the owner's basis 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 may be determined by either of the following methods, or any other method which is normally used by qualified appraisers in establishing the fair market value of a lessor's leased fee interest in land:

- (A) The sum of: (i) 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 (ii) 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 3. Part IIA, Chapter 516, Hawaii Revised Statutes, is amended to read:

“Sec. 516-51 Preliminary negotiation required. (a) Upon the filing of a peti-

tion 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 no agreement is reached within sixty days after the request to negotiate, the parties shall simultaneously exchange written final offers together with any appraisals, other documents, and any other expert opinions on which their negotiating positions were based. Copies of the final offers and related documents shall be submitted to the authority and the authority may use the information in determining, prior to commencing condemnation proceedings, the probability that lessees will be able to meet the financial requirements of section 516-33(4).

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

SECTION 4. Sections 516-52 to 516-55, Hawaii Revised Statutes, are repealed.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.*

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

(Approved May 22, 1980.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.