

FOR ACTION

I. REQUEST

Consider Authorizing the Executive Director to Initiate Administrative Rulemaking for the Ninety-Nine Year Leasehold Program as provided in Hawaii Revised Statute (HRS), 206E, Part XII, and conduct community engagement and public hearings to adopt the rules pursuant to HRS, Chapter 91 and Chapter 206E.

II. BACKGROUND

Act 97 (Act) of Session Laws of Hawaii 2023 establishes a 99-year leasehold condominium program within the Hawaii Community Development Authority (HCDA). The purpose of the Act is to develop low-cost, leasehold residential condominium project for sale to Hawaii residents on state-owned lands within an urban redevelopment site (Project). The Act authorizes one project on non-ceded lands within an urban redevelopment site selected by the HCDA.

The Act appropriates \$1,500,000 for the purpose of administrative rule making, engaging the community, and conducting site and pre-development planning. The Act also established 2 full-time temporary positions within the HCDA and provides funding for the positions.

III. DISCUSSION

A part-time planning staff has been hired to assist with the administrative rule making, community engagement, and pre-development planning. Funds for the Project have been released by the Governor and will lapse by the end of June 30, 2024, if not encumbered by a contract. A request for proposal (RFP) to provide development services for the Project was released in February 2024. No proposals were received by proposal submittal deadline. Since no proposals were received by the proposal deadline, and since it was not practicable to resolicit the RFP, staff is following an alternative procurement method to retain a developer to perform pre-development work for the Project.

Administrative rules will need to be promulgated to comply with the provisions of the Act before the development of the Project and sale of condominium units. Staff anticipates conducting community consultations prior to developing a draft of the administrative rules. Once a draft administrative rule is developed, two consecutive public hearings will be held before adoption of the rules by the HCDA.

IV. RECOMMENDATION

Staff recommends that the Authority authorize Executive Director to initiate Administrative Rulemaking for the Ninety-Nine Year Leasehold Program and conduct community engagement and public hearings to adopt the rules.

Attachments: Exhibit A – Act 97

Prepared By: Deepak Neupane, HCDA Program Specialist V 

Reviewed By: Craig K. Nakamoto, Executive Director *Craig Nakamoto*



GOV. MSG. NO. 1198

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

June 21, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

✓ The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 21, 2023, the following bill was signed into law:

SB865 SD2 HD1 CD1

RELATING TO HOUSING.
ACT 097

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

on JUN 21 2023

THE SENATE
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

S.B. NO. 865
S.D. 2
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO HOUSING.

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

1 SECTION 1. In accordance with section 9 of article VII of
 2 the Hawaii State Constitution and sections 37-91 and 37-93,
 3 Hawaii Revised Statutes, the legislature has determined that the
 4 appropriations contained in H.B. No. 300, H.D. 1, S.D. 1,
 5 C.D. 1, and this Act will cause the state general fund
 6 expenditure ceiling for fiscal year 2023-2024 to be exceeded by
 7 \$1,065,457,367 or 11.0 per cent. This current declaration takes
 8 into account general fund appropriations authorized for fiscal
 9 year 2023-2024 in H.B. No. 300, H.D. 1, S.D. 1, C.D. 1, and this
 10 Act only. The reasons for exceeding the general fund
 11 expenditure ceiling are that:

12 (1) The appropriation made in this Act is necessary to
 13 serve the public interest; and

14 (2) The appropriation made in this Act meets the needs
 15 addressed by this Act.

16 SECTION 2. The legislature finds that the cost and
 17 availability of housing in the State are significant challenges
 18 facing Hawaii residents. Although Hawaii has the tenth highest



1 median wage nationally, living expenses are two-thirds higher
2 than the rest of the nation, with the cost of housing being a
3 major contributing factor. According to the Honolulu Board of
4 REALTORS, by March 2022, the median price for a single-family
5 home on Oahu had risen to \$1,150,000, while the median price for
6 condominiums on Oahu had risen to \$515,000. With a simple
7 mortgage calculator and using conservative assumptions on
8 interest rates and down payment amounts, a household would need
9 to earn over \$200,000 annually to afford to buy a median-priced
10 home on Oahu in 2022, making homeownership out of reach for many
11 of Hawaii's residents, especially first-time buyers.

12 Because of the many barriers hindering the production of
13 new housing, including geographic limitations, lack of major
14 infrastructure, construction costs, and government regulation,
15 the State and housing developers have not been able to produce
16 enough housing for Hawaii residents. According to a 2019 report
17 from the department of business, economic development, and
18 tourism, the projected long-run average estimate of total demand
19 for housing in Hawaii is 72,310 for the 2020 to 2030 period.
20 The legislature has responded through the passage of various
21 legislation. During the regular session of 2020, the



1 legislature passed Act 42, Session Laws of Hawaii 2020, that,
2 among other things, increased the Hula Mae multifamily revenue
3 bond authorization to address Hawaii's affordable rental housing
4 crisis. During the regular session of 2021, the legislature
5 passed Act 227, Session Laws of Hawaii 2021, to establish an
6 affordable homeownership revolving fund to provide loans to
7 nonprofit community development financial institutions and
8 nonprofit housing development organizations for the development
9 of affordable homeownership housing projects. During the
10 regular session of 2022, the legislature passed Act 236, Session
11 Laws of Hawaii 2022, that, in part, provides funds to address
12 Hawaii's affordable rental housing crisis.

13 Despite these efforts, the amount of new construction of
14 housing, especially for low- to middle-income families,
15 continues to be inadequate as the supply of housing remains
16 constrained while demand for housing increases. This lack of
17 supply leads to higher housing prices and rents for households
18 of all income levels, leaving all tenants with less disposable
19 income, increasing the personal stress on buyers and renters,
20 and exacerbating overcrowding and homelessness. Given these



1 consequences, the lack of affordable housing requires the
2 concentrated attention of state government at the highest level.

3 The legislature further finds that with Honolulu's
4 construction of an elevated rail transit system, the State has
5 an opportunity to enhance Oahu's urban environment and increase
6 the quality of life for residents by increasing the affordable
7 housing inventory and eliminating the need for personal
8 automobiles, among other public benefits. As the largest
9 landowner of properties along the transit line, with
10 approximately two thousand acres under the jurisdiction of
11 various departments, the State must be proactive in establishing
12 a unified vision and approach toward redevelopment of its
13 properties to maximize the benefits of state lands available for
14 redevelopment.

15 The purpose of this Act is to:

- 16 (1) Establish the ninety-nine year leasehold program to
17 facilitate the creation of low-cost leasehold
18 residential condominium units for sale to Hawaii
19 residents on non-ceded state-owned land near public
20 transit stations; and



1 (2) Authorize the Hawaii community development authority
2 to sell the leasehold interest in residential
3 condominium units located on state lands for lease
4 terms of ninety-nine years.

5 SECTION 3. Chapter 206E, Hawaii Revised Statutes, is
6 amended by adding a new part to be appropriately designated and
7 to read as follows:

8 "PART . NINETY-NINE YEAR LEASEHOLD PROGRAM

9 §206E- Definitions. As used in this part, unless the
10 context otherwise requires:

11 "Mixed-use project" means a project consisting of any
12 combination of a commercial project, redevelopment project, or
13 residential project.

14 "Owner-occupied residential use" means any use currently
15 permitted in existing residential zones consistent with owner
16 occupancy. "Owner-occupied residential use" does not include
17 renting or subleasing by the owner of a residential condominium
18 unit to any tenant or sublessee of any kind.

19 "Project" means a specific work or improvement, including
20 real and personal properties, or any interest therein, acquired,
21 owned, constructed, reconstructed, rehabilitated, or improved by



1 the authority, including a commercial project, redevelopment
2 project, residential project, or mixed-use project.

3 "Public transit station" means a planned or existing
4 station connected to a locally preferred alternative for a mass
5 transit project.

6 "Urban redevelopment site" means non-ceded state-owned
7 lands within a one-mile radius of a public transit station in a
8 county having a population greater than five hundred thousand.

9 §206E- Ninety-nine year leasehold program. (a) There
10 is established the ninety-nine year leasehold program for the
11 purpose of providing low-cost, leasehold residential condominium
12 units for sale to Hawaii residents on state-owned lands within
13 an urban redevelopment site.

14 (b) The program shall be limited to one project on non-
15 ceded lands within an urban redevelopment site, which shall be
16 selected by the authority.

17 §206E- Rules; guidelines. (a) Residential condominium
18 units within urban redevelopment sites shall not be advertised
19 for rent, rented, or used for any purpose other than owner-
20 occupied residential use. The authority, by rule, shall
21 establish penalties for violations of this subsection up to and



1 including forced sale of a residential condominium unit within
2 an urban redevelopment site.

3 (b) The design and development contracts for residential
4 condominium units within an urban redevelopment site shall be
5 subject to chapter 103D.

6 (c) Development should be revenue-neutral to the greatest
7 extent possible.

8 (d) Urban redevelopment sites shall maximize walkability.

9 §206E- Sale of the leasehold interest of residential
10 condominium units; rules; guidelines. (a) The authority shall
11 adopt rules pursuant to chapter 91 for the sale of the leasehold
12 interest of residential condominium units under its control
13 within urban redevelopment sites; provided that each lease shall
14 be for a term of ninety-nine years. The rules shall include the
15 following requirements for an eligible buyer or owner of a
16 residential condominium unit within an urban redevelopment site:

17 (1) The person shall be a qualified resident of the State,
18 as defined in section 201H-32;

19 (2) The person shall not use a residential condominium
20 unit within an urban redevelopment site for any
21 purpose other than owner-occupied residential use; and



1 (3) The person, the person's spouse, or any other person
2 intending to live with the eligible buyer or owner,
3 shall not own any other real property, including any
4 residential and non-residential property, beneficial
5 ownership of trusts, and co-ownership or fractional
6 ownership, while owning a residential condominium unit
7 within an urban redevelopment site; provided that an
8 eligible buyer may own real property up to six months
9 after closing on the purchase of a residential
10 condominium unit within an urban redevelopment site;
11 provided further that an owner of a residential
12 condominium unit within an urban redevelopment site in
13 the process of selling the residential condominium
14 unit may own other real property up to six months
15 prior to closing on the sale of the residential
16 condominium unit to an eligible buyer;
17 provided that the rules adopted pursuant to this subsection may
18 require at least fifty per cent of the residential condominium
19 units be sold to an individual or household with an income of up
20 to one hundred forty per cent of the area median income. The
21 rules shall include strict enforcement of owner-occupancy,



1 including a prohibition on renting or subleasing a residential
2 condominium unit within an urban redevelopment site to any
3 tenant or sublessee. The authority may also establish rules for
4 a minimum number of days residents shall be physically present
5 on the premises and a maximum number of days non-residents may
6 have access to the premises.

7 (b) The median price of residential condominium units
8 within an urban redevelopment site shall be priced at the
9 minimum levels necessary to ensure that the development is
10 revenue-neutral for the State.

11 (c) Residential condominium units within an urban
12 redevelopment site shall be sold only to other eligible buyers.

13 (d) An owner of a residential condominium unit within an
14 urban redevelopment site may sell the owner's residential
15 condominium unit; provided that the authority shall have the
16 right of first refusal to purchase the residential condominium
17 unit for certain period of time and for a buyback price to be
18 determined by the authority. If the authority does not exercise
19 its right to purchase the residential condominium unit, the
20 residential condominium unit may be sold by the owner to an
21 eligible buyer. Upon the death of the owner of a residential



1 condominium unit within an urban redevelopment site, the
2 residential condominium unit may be transferred to the
3 deceased's heir by devise or as any other real property under
4 existing law; provided that the deceased's heir shall meet the
5 requirements listed in subsection (a); provided further that if
6 the deceased's heir does not meet requirements to accept
7 transfer of the residential condominium unit, the deceased's
8 heir shall sell the residential condominium unit to an eligible
9 buyer.

10 (e) The authority may adopt rules pursuant to chapter 91
11 that authorize the executive director to waive the requirements
12 set forth in subsection (a), where the inability of an owner to
13 reside in the residential condominium unit is due to unforeseen
14 circumstances, military transfer, serious illness, or other
15 hardship circumstances as determined by the executive director.

16 **§206E- Use of public lands; acquisition of state lands.**

17 (a) If state lands under the control and management of other
18 public agencies are required by the authority for the purposes
19 of this part, the agency having the control and management of
20 those required lands, upon request by the authority and with the
21 approval of the governor, may convey or lease those lands to the



1 authority upon terms and conditions as may be agreed to by the
2 parties.

3 (b) Notwithstanding the foregoing, no public lands shall
4 be conveyed or leased to the authority pursuant to this section
5 if the conveyance or lease would impair any covenant between the
6 State or any county or any department or board thereof and the
7 holders of bonds issued by the State or that county, department,
8 or board.

9 **§206E- Acquisition of real property from a county.**

10 Notwithstanding the provision of any law or charter, any county,
11 by resolution of its county council, without public auction,
12 sealed bids, or public notice, may sell, lease, grant, or convey
13 to the authority any real property owned by it that the
14 authority certifies to be necessary for the purposes of this
15 part. The sale, lease, grant, or conveyance shall be made with
16 or without consideration and upon terms and conditions as may be
17 agreed upon by the county and the authority. Certification
18 shall be evidenced by a formal request from the authority.
19 Before the sale, lease, grant, or conveyance may be made to the
20 authority, a public hearing shall be held by the county council
21 to consider the same. Notice of the hearing shall be published



1 at least six days before the date set for the hearing in the
2 publication and in the manner as may be designated by the county
3 council.

4 **§206E- Condemnation of real property.** The authority,
5 upon making a finding that it is necessary to acquire any real
6 property for its immediate or future use for the purposes of
7 this part, may acquire the property, including property already
8 devoted to a public use, by condemnation pursuant to
9 chapter 101. The property shall not thereafter be taken for any
10 other public use without the consent of the authority. No award
11 of compensation shall be increased by reason of any increase in
12 the value of real property caused by the designation of the
13 urban redevelopment site or plan adopted pursuant to a
14 designation, or the actual or proposed acquisition, use, or
15 disposition of any other real property by the authority.

16 **§206E- Construction contracts.** Construction contracts
17 for residential condominium units within an urban redevelopment
18 site shall be subject to chapter 103D.

19 **§206E- Lease of projects.** Notwithstanding any law to
20 the contrary, the authority, without recourse to chapter 103D,
21 may lease for a term not exceeding sixty-five years all or any



1 portion of the real or personal property constituting a
2 commercial project to any person, upon terms and conditions as
3 may be approved by the authority; provided that all revenues
4 generated from the lease shall be used to support the purpose of
5 the program.

6 **§206E- Assistance by state and county agencies.** Any
7 state or county agency, upon request of the authority, may
8 render services for the purposes of this part.

9 **§206E- Lands no longer needed.** Lands acquired by the
10 authority from another government agency that are no longer
11 needed by the authority for the program shall be returned to the
12 previous owner of those lands. Lands acquired by the authority
13 from a private party that are owned by the authority and
14 designated for the program but are subsequently no longer needed
15 for the program shall be retained by the authority.

16 **§206E- Rules.** The authority may adopt rules pursuant to
17 chapter 91 that are necessary for the purposes of this part.

18 **§206E- Leasehold condominiums on state lands.** (a) The
19 authority may sell leasehold units in condominiums organized
20 pursuant to chapter 514B and developed under this part on state
21 land to a qualified resident as defined in section 201H-32.



1 (b) The term of the lease may be for ninety-nine years,
2 and the authority may extend or modify the fixed rental period
3 of the lease or extend the term of the lease.

4 (c) The powers conferred upon the authority by this
5 section shall be in addition and supplemental to the powers
6 conferred by any other law, and nothing in this section shall be
7 construed as limiting any powers, rights, privileges, or
8 immunities so conferred.

9 §206E- Annual reports. The authority shall submit a
10 report to the legislature on the progress of the program
11 projects no later than twenty days prior to the convening of
12 each regular session. The annual report shall include the
13 feasibility of expanding the program, the demand of leasehold
14 projects developed under this part, and an appropriate leasehold
15 duration."

16 SECTION 4. Section 302A-1603, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) The following shall be exempt from this section:

19 (1) Any form of housing permanently excluding school-aged
20 children, with the necessary covenants or declarations
21 of restrictions recorded on the property;



- 1 (2) Any form of housing that is or will be paying the
- 2 transient accommodations tax under chapter 237D;
- 3 (3) All nonresidential development;
- 4 (4) Any development with an executed education
- 5 contribution agreement or other like document with the
- 6 authority or the department for the contribution of
- 7 school sites or payment of fees for school land or
- 8 school construction; ~~and~~
- 9 (5) Any form of housing developed by the department of
- 10 Hawaiian home lands for use by beneficiaries of the
- 11 Hawaiian Homes Commission Act, 1920, as amended~~[+]~~;
- 12 and
- 13 (6) Any form of development by the Hawaii community
- 14 development authority pursuant to part of chapter
- 15 206E."

16 SECTION 5. There is appropriated out of the general

17 revenues of the State of Hawaii the sum of \$1,500,000 or so much

18 thereof as may be necessary for fiscal year 2023-2024 for the

19 Hawaii community development authority to:

- 20 (1) Adopt rules;
- 21 (2) Engage the community; and



1 (3) Conduct site and predevelopment planning;
2 for the ninety-nine year leasehold program established in
3 section 3 of this Act.

4 The sum appropriated shall be expended by the Hawaii
5 community development authority for the purposes of this Act.

6 SECTION 6. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$190,000 or so much
8 thereof as may be necessary for fiscal year 2023-2024 and the
9 same sum or so much thereof as may be necessary for fiscal year
10 2024-2025 for the establishment of two full-time equivalent
11 (2.0 FTE) positions within the Hawaii community development
12 authority.

13 The sums appropriated shall be expended by the Hawaii
14 community development authority for the purposes of this Act.

15 SECTION 7. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

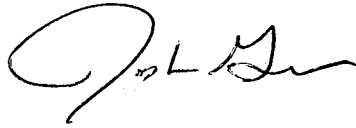
17 SECTION 8. This Act shall take effect on July 1, 2023;
18 provided that the amendments made to section 302A-1603(b),
19 Hawaii Revised Statutes, by section 4 of this Act shall not be
20 repealed when that section is reenacted pursuant to Act 197,
21 Session Laws of Hawaii 2021.



S.B. NO.

865
S.D. 2
H.D. 1
C.D. 1

APPROVED this **21st** day of **June**, 2023

A handwritten signature in black ink, appearing to be 'J. L. Ige', written in a cursive style.


GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: May 4, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.


President of the Senate


Clerk of the Senate

SB No. 865, SD 2, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 4, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives