

ACT 32

A Bill for an Act Relating to the Public Lands of the State.

WHEREAS, section 11 of Article III of the Constitution of the State of Hawaii provides for the consideration and enactment in a budget session of all urgency measures deemed necessary in the public interest; and

WHEREAS, said section further provides that no urgency measure shall be considered unless a statement of facts constituting such urgency shall be set forth in a section thereof and until such section shall have been first approved by each house; and

WHEREAS, it is the intention of the legislature to enact this as an urgency measure pursuant to said section 11 of Article III; now, therefore,

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 the facts constituting such urgency:

By virtue of section 15 of the Statehood Act, a serious question exists as to whether or not Hawaii has any land laws relating to the management and disposition of the public lands.

It is of immediate importance to the economy and to the people of Hawaii that we adopt a set of laws for the management and disposition of our public lands in accordance with present day needs.

SECTION 2. The Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new chapter to be appropriately numbered and to read as follows:

“CHAPTER

PUBLIC LANDS: MANAGEMENT AND DISPOSITION OF

PART I. GENERAL PROVISIONS

Section -1. Definitions.

In this chapter, if not inconsistent with the context:

‘Animal unit’ means one mature cow or horse; two yearling steers or heifers; five mature sheep; 12 weaned lambs; two colts;

‘Board’ means the board of land and natural resources as provided in this chapter;

‘Carrying capacity’ means the maximum number of animal units which an area will support over a period of years without injury to the soil, forage resources, tree growth, watershed or unwarranted interference with other services of the land;

‘Department’ means the department of land and natural resources;

‘Director’ means the director of land and natural resources;

‘District’ means the land district as constituted under this chapter;

‘Holder of record having a security interest’ is a person who is the owner or possessor of a security interest in any land covered in section 21 of this chapter and who has filed with the Bureau of Conveyances of the State and with the department a copy of such interest;

‘Land’ includes all interests therein and natural resources including water,

minerals and all such things connected with land, unless otherwise expressly provided;

'Land agent' means the land agent of the public lands of the district where the land is situated;

'Land license' means a privilege granted for the occupation of land for certain special purpose such as the removal of timber, soil, sand, gravel, stone, hapuu and plants, but not including use of water, ground or surface, nor removal of minerals, or removal of sand on Oahu;

'Land Patent' means a government grant of real estate in fee simple;

'Lease' means the right to possess and use land for a term of years;

'Person' includes individual, partnership, corporation and association, except as otherwise defined in this chapter.

Section -2. **Description of public lands.**

'Public lands' includes all lands and interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to such date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner, including submerged lands and lands beneath tidal waters which are suitable for reclamation together with reclaimed lands which have been given the status of public lands under this chapter; except: (1) lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended, (2) lands set aside pursuant to law for the use of the United States, (3) lands set aside under the provisions of section 11 of this chapter, (4) lands being used for roads and streets, (5) lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board and given the status of public lands in accordance with the provisions of the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws, (6) lands to which the University of Hawaii holds title, and (7) lands to which the Hawaii Housing Authority in its corporate capacity holds title.

Section -3. **Department of land and natural resources.**

The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources. The department shall manage, administer and exercise control over public lands, the water resources and minerals and all other interests therein and exercise such powers of dispositions thereof as may be authorized by law. The department shall also manage and administer the state parks, historical sites, forest, fish and game reserves of the State, the forest reserve and any other functions assigned to it by law.

The board shall appoint and may remove an executive officer to be known as the director of land and natural resources. He shall receive such salary as the board, with the approval of the governor, may provide, subject to such limits as may be set by law.

Section -4. **Board of land and natural resources; terms and qualifications of members of the board; organization; expenses.** The board of land and natural resources shall be composed of six members, one from each land district and two at large, to be nominated and, by and with the advice and consent of the senate, appointed by the governor as provided in section 14A-3 of the Revised Laws of Hawaii 1955, as amended. The term and removal of a member of the board and the filling of a vacancy on the board

shall also be as provided in said section 14A-3. There shall be not more than three members on the board from the same political party.

Each member shall disclose and file with the board a list of all transactions with the department of land and natural resources in which he has a direct interest. He shall also disclose all transactions with the department involving any corporation, association, partnership or joint venture in which he is an officer, partner or employee. Any member having any interest, direct or indirect, in any matter before the board shall disqualify himself from voting on or participating in the discussion of such matter.

The board shall select a chairman from among its members. The chairman shall call and preside at meetings and may appoint a member of the board as secretary. The members of the board shall choose one of their number to act as chairman during the absence or disability of the chairman.

The members of the board shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties.

Section -5. **Meetings, regular, special; quorum.** Regular meetings of the board shall be held not less than once a month and the board shall provide in its rules and regulations the number and dates for such regular meetings. Special meetings may be called by the chairman at any time by giving notice thereof to each member present in the state at least five days prior to the date of such special meeting; provided, however, that notice shall not be required if all members present in the state agree and sign a written waiver of such notice.

However no final action involving disposition of public lands may be had at such special meeting.

Any action taken by the board shall be by a simple majority of the members of the board. Four members of the board shall constitute a quorum to do business. The board shall keep accurate records and minutes of all meetings, special and regular, and they shall be public records. Copies of portions of the agendas relating to dispositions of land shall be made available to the public in the land office of each district at least three days before the meeting at which such matter will be discussed or voted upon.

POWERS OF THE BOARD

Section -6. **Powers.** Except as otherwise provided by law, the board shall have the powers and functions granted to the heads of departments and the board of land and natural resources under the Hawaii State Government Reorganization Act of 1959.

In addition to the foregoing, the board may :

- (a) adopt a seal;
- (b) administer oaths;
- (c) prescribe forms of instruments and documents;
- (d) promulgate rules and regulations, which rules and regulations, upon compliance with the Hawaii Administrative Procedure Act, shall have the force and effect of law;

(e) set, charge, demand and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its public documents and records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;

(f) establish additional restrictions, requirements or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license or permit, and the qualifications of any person to draw, bid or negotiate for public land; and

(g) reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use; or exceed one year for land to be used for resort, commercial, industrial or other business use.

(h) delegate to the director or other employees of the department, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board.

(i) utilize arbitration under chapter 188 of the Revised Laws of Hawaii, 1955, as amended, to settle any controversy arising out of any existing or future lease.

Section -7. General duties of the board. Except as provided by law the board through the director shall:

(a) maintain an accurate inventory of public lands;

(b) prevent unlawful occupation of or trespassing on public lands;

(c) cause all trespassers and persons unlawfully occupying public lands, and their effects, and all animals trespassing on such lands to be removed therefrom and to impound such animals according to law;

(d) enter on any public land in order to take possession thereof, and to resume possession of any public land in case of surrender, forfeiture or escheat;

(e) enforce contracts respecting sales, leases, licenses[,] permits or other disposition of public lands;

(f) conduct all public auctions and sales pertaining to the disposition of public lands and other property authorized by the board;

(g) recover money due the state for damage done to any public lands by wrongful entry and occupation or by wrongful removal therefrom or destruction of any property;

(h) bring such actions and proceedings as may be necessary to carry out the powers and duties of the board in the name of the state and to defend such actions brought against the state as may be authorized;

(i) keep a record of all official transactions, relating to public lands within his jurisdiction and such record shall be a public record; and

(j) administer oaths in all matters pertaining to the administration of the public lands.

Section -8. Land agents, district rangers and other employees. The board shall be represented in each land district by a land agent and one or more district rangers. The board may employ other necessary employees.

The land agent shall exercise such powers and duties delegated to him by the board.

The duties of the district rangers, in addition to other duties which may be assigned by the board shall be to observe and determine whether the provisions of the laws of the State relative to public lands and of this

chapter, and the provisions of patents, leases, deeds, licenses, agreements or other instruments in respect to such lands are being complied with by tenants, lessees, licensees, grantees or other persons occupying or possessing such lands and to report on such matters to the board through the director and land agent.

The appointment, removal and compensation of land agents, district rangers and other employees shall be determined in accordance with chapters 3 and 4.

Section -9. Land districts. For the purposes of this chapter the state is divided into the following land districts:

First Land District: The island of Hawaii and the reefs and reef lands off the shores of the island of Hawaii.

Second Land District: The islands of Maui, Molokai, Lanai, Kahoolawe and Molokini and the reefs and reef lands off the shores of these islands.

Third Land District: The island of Oahu and all other islands and reefs in the state of Hawaii not included in the other districts.

Fourth Land District: The islands of Kauai, Niihau, Lehua and Kaula, and the reefs and reef lands off the shores of these islands.

Section -10. Classes of lands. The board shall classify all public lands and in doing so be guided by the following classifications:

1. Intensive agricultural use

(a) First class—Lands highly productive of intensive crops such as sugar cane, pineapples, truck crops and orchard crops.

(b) Second class—Lands having medium productivity for intensive crops.

(c) Third class—Lands having fair to marginal productivity for intensive crops.

2. Special livestock use

(a) First class—Lands highly suitable for special livestock uses such as swine, dairy and poultry production. In making such determination, consideration shall be given to drainage, climate, topography, proximity to market and transportation and compatibility to adjoining land use, among other considerations. 'Dairy' as used for disposition purposes means a 'dry lot' dairy without allowance for grazing.

(b) Second class—Lands suitable for special livestock uses, but inferior to those of first class.

3. Pasture use

(a) First class—Lands having a potentially high economic animal unit carrying capacity and capable of correspondingly high liveweight gains per acre per year, such as, less than 5 acres per animal unit per year and more than 100 pounds live beef gains per animal unit per acre per year.

(b) Second class—Lands having a potentially medium economic animal unit carrying capacity and capable of moderate liveweight gains per acre per year, such as, 5 to 20 acres per animal unit per year and 20 to 100 pounds live beef gains per animal unit per acre per year.

(c) Third class—Lands having a relatively low animal unit carrying capacity and producing correspondingly low liveweight gains per acre per year, such as, more than 20 acres per animal unit per year and less than 20 pounds average live beef gains per animal unit per acre per year.

4. Commercial timber use

(a) First class—Lands of high suitability for growth of merchantable timber having mean annual growth potential under normal forest manage-

ment practices with yields exceeding amounts such as 1,000 board feet per acre, and with location and terrain presenting favorable logging, transportation and marketing conditions.

(b) Second class—Lands of high suitability for growth of merchantable timber having mean annual growth potential under normal forest management practices with yields exceeding amounts such as 1,000 board feet per acre, and with location and terrain presenting less favorable logging, transportation and marketing conditions.

(c) Third class—Lands of medium suitability for growth of merchantable timber having mean annual growth potential in amounts such as 500 to 1,000 board feet per acre under normal forest management practices, and with location and terrain presenting favorable logging, transportation and marketing conditions.

(d) Fourth class—Lands of medium suitability for growth of merchantable timber having mean annual growth potential in amounts such as 500 to 1,000 board feet per acre under normal forest management practices, and with location and terrain presenting less favorable logging, transportation and marketing conditions.

(e) Fifth class—Lands of relatively low suitability for growth of merchantable timber having mean annual growth potential less than an amount such as 500 board feet per acre, and with location and terrain presenting favorable logging, transportation and marketing conditions.

(f) Sixth class—Lands of relatively low suitability for growth of merchantable timber having mean annual growth potential less than an amount such as 500 board feet per acre, and with location and terrain presenting less favorable logging transportation and marketing conditions.

5. Quarry use

Lands having sufficient quantity and quality of rock gravel and sand for purpose of commercial use.

6. Mining use

Lands bearing sufficient quantity and quality of mineral products for purpose of commercial mining and use.

7. Recreational use

Lands suitable for use and development as parks, playgrounds, historical sites, natural area, camp grounds, wildlife refuge, scenic sites, and other such uses.

8. Watershed use

Lands suitable for the use and development as watersheds or for the development of water, and requiring necessary restrictions on other uses.

9. Residential use

Lands suitable and economically feasible for residential development and use.

10. Commercial and industrial use

Lands suitable and economically feasible for commercial and industrial development and use.

11. Hotel, apartment and motel use

Lands suitable and economically feasible for hotel, apartment and motel development and use.

12. Resort use

Lands suitable and economically feasible for resort development and use.

13. Unclassified uses

Lands not otherwise classifiable under the foregoing sections.

Section -11. Public purposes, lands set aside by the governor; management. The governor may, after giving notice to the appropriate board of supervisors or city council of the county where the land is located and with the prior approval of the board, set aside public lands to any department or agency of the state, the city and county, county or other political subdivisions of the state for public use or purpose. All withdrawals of such lands or portions thereof so set aside shall be made by the governor.

Lands while so set aside for such use or purpose shall be managed by the department, agency, city and county, or other political subdivisions of the state to which the lands have been set aside, unless otherwise provided by law. Such department, agency or political subdivisions may, with the approval of the board, issue leases, licenses, revocable permits or rights of entry covering such lands for such use as may be consistent with the purposes for which the lands were set aside on the same terms, conditions and restrictions applicable to disposition of public lands. If, at the time of the disposition of any such leases the board shall have approved the same, any order withdrawing or setting aside any or all of such lands for any other public purpose shall be made subject to such leases. Subject to the provisions of section 5(f) of the Act of March 18, 1959 (73 Stat. 6), all proceeds from such lands shall be deposited into the appropriate funds provided by law.

The provisions of this section shall also apply where the public purpose are the uses and purposes of the United States; provided, however, that all revenues derived from such lands and improvements thereon shall be paid to the department by the United States.

Whenever lands set aside for a public purpose to the various departments and agencies of the state, or to any city and county, county, or other political subdivisions of the state, or to the United States, are not being utilized for the public purpose stated, the order setting aside such lands shall be withdrawn and returned to the department.

The power granted to the governor in this section to set aside or withdraw shall be exercised only after receiving the approval of the Senate.

Section -12. Permanent register of applicants for public lands. The board shall establish and maintain in each land district a register in which all persons desiring to acquire public lands in the district may register. The board may require such persons to submit information in writing and under oath to determine the eligibility of any registrant to acquire such lands.

Section -13. Disposition of public lands. Except as otherwise provided by law and subject to other provisions of this chapter, the board may: (a) dispose of public land in fee simple, by lease, lease with option to purchase, license or permit; and (b) grant easement for particular purposes which may be granted for a term not to exceed 65 years on such terms and conditions set by the board, subject, however, to revert to the State upon termination or abandonment of the specific purpose for which it was granted.

Section -14. Auction. Except as otherwise specifically provided, all dispositions of public lands shall be made at public auction after public notice as provided in section 16 of this chapter. All such auctions shall be held at the door of the office of the land agent in the district in which the land is located and shall be conducted by the director or the land agent or by any authorized employee of the department under the direction of the board, all of whom shall perform this service without extra compensation.

Section -15. Drawing. Whenever public lands are to be sold or leased by drawing, the board shall notify by publication of applications for such drawing as provided in section 16 of this chapter with such details concerning the drawing as it shall deem necessary and desirable. Applications to participate in the drawing must be filed with the board within two weeks after the last publication date. Within forty-five days after the closing date for applications, the board shall screen the qualifications of the applicants, select those qualified to participate, notify all applicants of such selection and conduct a drawing. The date of such drawing shall be published as set forth in section 16 of this chapter. The award shall be made within one week and all applicants shall be notified of the result of such drawing. The lease or patent shall be issued within ninety days after such drawing or when conditions of sale are fulfilled.

Section -16. Notices. (a) Auctions. Notice of any proposed disposition by auction shall be published at least once in each of three successive weeks in a newspaper of general circulation in the state and, in addition, in a newspaper of general circulation in the appropriate county, if the land is situated in the first, second and fourth districts, the last publication to be not less than ten days before the date of the auction. Notice of the auction shall contain the following: (1) time and place of the auction; (2) general description of the land, including the address and tax map key; (3) specific use for which the disposition is intended; and (4) upset price or rental to be charged. The maps showing the metes and bounds description and the classification of the land shall be kept in the office of the board and of its land agent in the county in which the land is situated, and shall be open for inspection at all reasonable hours.

The auction shall be held at the door of the office of the land agent in the district in which the land is located and shall be conducted by the director or the land agent or by any authorized employee of the board under its direction, all of whom shall perform this service without extra compensation.

(b) Drawings. Whenever a disposition by drawing by lots is proposed, notice inviting applications to participate in the drawing shall be published once a week for four successive weeks in a newspaper of general circulation published in the state and, in addition, in a newspaper of general circulation in the appropriate county, if the land is situated in the first, second and fourth districts. The notice shall state: (1) the qualifications required of applicants; (2) a general description of the land, including the address and tax map key; (3) specific use for which the disposition is intended; and (4) date by which all applications must be filed which date shall be not less than ten days after the last publication date. Within 45 days after the closing date for applications, the board shall select those qualified to participate in the drawing, notify all applicants as to whether or not he qualified, and conduct the drawing.

The notice of selection of applicants qualified to participate in the drawing, together with the notice of drawing, shall be mailed to each applicant, whether or not he in fact, qualified. The notice of the drawing shall state the time and place of the drawing. In addition to the notice to each applicant, the board shall publish the notice of drawing at least three times within a period of ten days in a newspaper of general circulation in the state and, in addition, in a newspaper of general circulation in the appropriate county, if the land is situated in the first, second and fourth districts, each publication

to be not oftener than once in two successive days. Upon completion of the drawing, the award shall be announced within one week, and the lease or patent issued within ninety days after the drawing.

(c) Negotiation. Notice of a proposed disposition by negotiation shall be published at least once in each of three successive weeks in a newspaper of general circulation in the state and in addition in a newspaper of general circulation in the appropriate county if the land is situated in the First, Second and Fourth Districts; provided, that such notices are not required for revocable permits, remnants and exchanges. Such notice shall invite proposals and state in general terms the size, location and prices or rental of lots to be sold or leased, the terms of sale or lease, and the last date on which application will be received by the board, which date shall not be less than thirty days after the last date of publication of such notice. Such notice shall also state the times and places at which more detailed information with respect to the sale or lease may be secured by interested persons.

Section -17. Appraisals.

(a) Public auction. The appraisal of public lands for sale or lease at public auction for the determination of the upset price may be performed by an employee of the board or by one but not more than three qualified appraisers whose services have been contracted for as provided herein. No such land shall be sold or leased for a sum less than the value fixed by appraisal; provided, however, that for any sale or lease at public auction, the board may establish the upset sale or rental price at less than the appraisal value and the land may be sold or leased at such price.

(b) Drawing or negotiation. The sale price or lease rental of lands to be disposed of by drawing or by negotiation shall be no less than the value determined by a disinterested appraiser or appraisers whose services have been contracted for as provided herein, and any further appraisal, made at the request of the purchaser and with the approval of the board shall be at the cost of the party requesting such additional appraisal.

(c) Repurchase. In the event of repurchase of any land by the board or on reopening of the rental to be paid on a lease, the value shall be determined by said qualified appraiser whose services have been contracted for as provided herein; provided, however, should the owner or lessee fail to agree upon such value, he may appoint his own appraiser who together with the board's appraiser shall appoint a third appraiser, and the value shall be determined by arbitration as provided in Chapter 188. The owner or lessee shall pay for his own appraiser and the cost of the third appraiser shall be borne equally.

(d) Purchase. The appraisal of private property to be acquired by the board may be performed by one but not more than three disinterested appraisers whose services have been contracted for by the board and no land shall be purchased for a sum greater than the highest value fixed by such appraiser or appraisers; provided, however, that the board may, after a review of such appraisals by the appraiser or appraisers or the attorney general, purchase such property at a value greater than such highest value if the higher value is determined by the appraiser or appraisers or the attorney general to be justified and within the range of market value; provided further that this limitation shall not apply where acquisition is by condemnation.

(e) Whenever more than one appraiser is appointed each shall prepare and submit an independent appraisal. All appraisal reports shall be available for study by the public.

Section -18. **Public land trust.** All funds derived from the sale or lease or other disposition of public lands shall be appropriated by the laws of the State; provided, that, all proceeds and income from the sale, lease or other disposition of lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation, approved July 7, 1898 (30 Stat. 750), or acquired in exchange for lands so ceded, and returned to the State of Hawaii by virtue of section 5(b) of the Act of March 18, 1959 (73 Stat. 6), and all proceeds and income from the sale, lease or other disposition of lands retained by the United States under sections 5(c) and 5(d) of said Act and later conveyed to the State under section 5(e) shall be held as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use.

Section -19. **Special land and development fund.** There is hereby created in the department a special fund to be designated as the 'special land and development fund'. Subject to the provisions contained in the Hawaiian Homes Commission Act of 1920, as amended, and in section 5(f) of the Admission Act of 1959, all proceeds of sale of public lands, including interest on deferred payments, and all rents from leases, licenses and permits derived from public lands shall be set apart in such fund and shall be used only as authorized by the legislature, except that, without such prior legislative authority, the board may use the fund for the following purposes:

(a) For preliminary planning and the preparation of economic and engineering feasibility studies of development or improvement projects. The board may engage the aid of such professional assistants as it may deem to be necessary or advisable in the conduct of such studies. The studies shall include the total cost of the project, the reasonable value of the land and all costs to the state which are reasonably necessary to complete the improvement and development of the land to its intended use in conformity with the comprehensive land use plan and any applicable county subdivision standards, all costs for the development of such connecting roads, water and utility lines from existing termini thereof as may be necessary and desirable for the placement of the land to immediate use following the disposition of the same;

(b) To reimburse the general fund of the state for advancements heretofore or hereafter made therefrom, which are required to be reimbursed from the proceeds of sales, leases, licenses or permits derived from public lands;

(c) For the incidental maintenance of public lands, including the repair of improvements thereon, not to exceed \$10,000 in any fiscal year;

(d) To repurchase any land, including improvements thereon, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease or other documents or as provided by law;

(e) For the payment of appraisal fees incurred by the board; provided, that the fund shall be reimbursed upon collection of such fees from the purchaser or lessee of public lands;

(f) For the payment of publication notices as required under this Act, provided that such expenditures shall not be charged to the purchaser or lessee of public lands.

Notwithstanding the above limitations on use of the proceeds of sale, where

the board sells public lands including the buildings thereon once used but no longer necessary for school purposes at the recommendation and request of the board of education, all net proceeds derived from such sales are hereby appropriated to the county wherein such sales occur for the acquisition of land or for the erection of buildings for school purposes to the extent of an approved building plan in the school district wherein such sales occur. In the absence of any school building program in such district or in the event of any surplus remaining after the completion of buildings constructed pursuant to such approved plan then the proceeds or surplus shall be used in other school districts in the county wherein such sales occur.

When use of the fund is authorized by the legislature for the development of public lands for a particular project, to be disposed of by sale, lease, license or permit, the board may pay from the fund the costs of such development, including the costs of surveys, construction of roads, water lines and sewer lines and such other improvements as may be necessary for the development of such lands; provided, that such project shall meet with the zoning and subdivision requirements of the appropriate county and city and county government in which the lands are located, except that plans and specifications for recreational projects, including access roads therefor, shall not be required to meet with such approval; and provided further, that no such development of public lands for disposal by sale, lease, license or permit shall be made unless appropriate roads, water lines and other improvements are installed which will make the land useable for the purpose for which it is being disposed at the time of disposition.

Section -20. Notice of breach or default. Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction or condition of any lease, patent, license, agreement or other instrument heretofore or hereafter issued under the provisions of this chapter, the board shall deliver a written notice of such breach or default by personal service or by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to such lease, patent, license, agreement or other instrument, making demand upon the party to cure or remedy the breach or default within 90 days from the date of receipt of the notice. Upon failure of the party to cure or remedy the breach or default within 90 days from the date of receipt of the notice, or within such additional period as the board may allow for good cause, the board may, subject to the provisions of section 21 of this chapter, exercise such rights as it may have at law or as set forth in the lease, patent, license, agreement or other instrument.

Section -21. Rights of holder of security interest. Whenever any notice of breach or default is given to any party under the provisions of section 20 of this chapter, or under the terms of any lease, patent, license, agreement or other instrument heretofore or hereafter issued under the provisions of this chapter, a copy of such notice shall be delivered by the board to all holders of record of any security interest in the land or interest covered by the lease, patent, license, agreement or other instrument whose security interest has been recorded with the board. Should the board seek to forfeit the interest or estate created by the lease, license, agreement, patent or other instrument, each holder may, at its option, cure or remedy the breach or default within 90 days from the date of receipt of the notice, or within such additional period as the board may allow for good cause and add the cost

thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the board may: (a) pay to the holder from any monies at its disposal, including the special land and development fund, which is hereby made available for such purpose, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of said debt and mortgage from said holder, or if ownership of such interest or estate shall then have vested in such holder by way of foreclosure or action in lieu thereof the board shall be entitled to a conveyance of said interest or estate upon payment to said holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with such foreclosure and preservation of its security interest, less appropriate credits, including income received from said interest or estate subsequent to such foreclosure; or (b) terminate the outstanding interest or estate subject to the lien of such mortgage, without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and thereupon use its best efforts to redispense of the land affected thereby to a qualified and responsible person who will assume the obligation of the mortgage and the debt thereby secured; provided, that a reasonable delay by the board in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of such right or to deprive it of such remedy when it may still hope otherwise to resolve the problems created by the breach or default involved. The provisions of section 21* of this chapter to the contrary notwithstanding, the proceeds of any redispense effected hereunder shall be applied, first, to reimburse the board for costs and expenses in connection with such redispense, second, to discharge in full any unpaid purchase price or other indebtedness owing the State in connection with such interest or estate terminated as aforesaid, and the balance, if any, shall be paid to the owner of such interest or estate. Nothing herein contained shall be construed in a manner as to infringe upon or prejudice in any way the rights of a holder of record having a security interest which shall have vested prior to the effective date hereof, and to the extent that the provisions of this section and section 92 of this chapter shall or may conflict and adversely affect such interests, the same shall be of no force and effect.

Section -22. **Consent to mortgage.** Whenever under any of the provisions of this chapter consent of the state is required as a condition precedent to the mortgage of, or the creation of a security interest in public land, the board may, upon due application, grant such consent, and if the mortgage or security interest is to a recognized lending institution, authorized to do business as a lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under the provisions of this chapter to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term 'holder' includes an insurer or guarantor of the obligation or condition of such mortgage, including the Federal Housing Commissioner, the Administrator of Veterans Affairs and their respective successors in office.

Notwithstanding any provision in this chapter to the contrary, in leases or sales for residential purposes, the board may waive or modify any restrictions of such lease or sale or any restrictions contained in any such lease or sale,

* So in original.

if such waiver or modification is necessary to enable the Federal Housing Administration, the Veterans Administration or any other federal agency to participate in any loan secured by a mortgage on the land or the leasehold interest.

Section -23. **Land patents and deeds, issued when.** Except as otherwise provided, a land patent or a deed shall issue under the seal of the department to the purchaser in fee simple of any public land or other land disposable by said board or to any holder of an award from the board of commissioners to quiet titles upon payment of the commutation, if any, required under sections 100-1 to 100-6 and upon presentation of satisfactory proof by the claimant to the lands covered by such award of sufficient right, title and interest to the awarded land.

Section -24. **Land conveyances, preparation, signing, record, copies.** Except for the preparation and execution of leases and licenses and the issuance of revocable permits and rights of entry by the department of transportation, in its harbor and airport functions, all land patents, deeds, leases, grants or other conveyances of any public land or any interest therein, shall be prepared by the department of land and natural resources. The department of transportation shall, within thirty days after the execution or issuance of such documents, file or record as directed by the board the original of the same with the board.

Documents setting aside lands for public purposes or withdrawing the same shall be signed by the governor. All other documents prepared by the department of land and natural resources shall be signed by its director and countersigned by any member of the board and in the absence or vacancy in the office of the director such documents shall be signed by two members of the board.

The board shall keep a complete record of all such documents. The record shall be open to public inspection and the board shall furnish a certified copy, under its official seal, of any such document to any person applying therefor, upon payment of reasonable charges set by the board for such certified copies.

Section -25. **Irrigation projects.** In any patent, agreement, or lease a condition may be provided requiring the inclusion of the land being disposed in any irrigation project formed or to be formed by the state agency responsible therefor and making the land subject to assessments made or to be made for such project and constituting such assessments a first lien upon the land which if not paid shall result in the forfeiture of the land subject to notice of default as provided in section 20 of this chapter.

Section -26. **Rights-of-way to the sea and game preserves.** Prior to the disposition of any public lands, the board shall lay out and establish over and across such lands a reasonable number of rights-of-way from established highways to the public beaches and game preserves in order that the right of the people to utilize the public beach or beaches and public game preserves shall be protected.

Prior to the leasing of any lands, the board shall determine the feasibility of hunting on such lands, and if any of them is suitable for hunting or may during the term of the lease become suitable for hunting, the board shall reserve such lands as game preserves consistent with the rights of the lessee.

The cost of such rights-of-way and any fencing which may be required shall be borne by the state, lessee or jointly as the board may deem appropriate prior to the leasing of such lands.

Section -27. **Taxes.** Any provision to the contrary notwithstanding, leases and licenses issued by the board and permits issued to permittees, who are holdover lessees or licensees, shall be subject to real property taxes which shall be assessed on a pro rata basis against the lessee, licensee or such permittee and his successor in interest.

The board shall notify the lessee, licensee or permittee and each holder of record having a security interest as provided in section 21 of this chapter of any default in the payment of such taxes and upon failure to remedy such default within ninety days after receipt of notice of default, the board shall cancel and terminate such lease, license or permit without prejudice to any other remedies the state may have against the lessee, licensee or permittee.

Section -28. **Government owned fish ponds.** The Board may investigate and develop scientific commercial management practices for government owned fish ponds and reconstruct, rehabilitate, improve and stock such fish ponds; and expend moneys from the special land and development fund.

All revenues derived from any government owned fish pond shall be deposited in such fund.

Section -29. **Report to legislature on all dispositions.** The board shall submit a written report annually to the legislature within ten days of the convening of each regular session, of all land dispositions made in the preceding year, including sales, leases, leases with options to purchase, licenses, concessions, permits, exchanges and setting aside of lands by executive orders, the persons to whom made, the size of each disposition, the purpose for which made, the land classification of each, the tax map key number, the per unit price paid or set, and whether the disposition was by auction, by drawing or by negotiation.

Section -30. **Acquisition of private property; general.** The board shall have the exclusive responsibility of acquiring, including by way of dedications (a) all real property and interest therein and the improvements thereon, if any, required by the State for public purposes, including real property together with improvements, if any, in excess of that needed for such public use in cases where small remnants would otherwise be left or where other justifiable cause necessitates such acquisition to protect and preserve the contemplated improvement, or public policy demands such acquisition in connection with such improvement, (b) encumbrances on public lands needed for public purposes or for the disposition for houselots or for economic development, in the form of leases, licenses or otherwise for any state department or agency; and shall upon the request of and with the funds from such department or agency, effectuate such acquisition; provided, that a state department or agency may directly acquire such real property for its purposes whenever such acquisition by such department or agency is required to conform to mandatory requirements of the United States in the case where federal funds are furnished to such department or agency.

Section -31. **Depository for documents; filing, record.** The department of land and natural resources is designated as a depository for purpose of recordation with the registrar of conveyances, all documents pertaining to real property or any interest therein conveyed to the Territory or State or to any political subdivision thereof.

The officer in charge of any department of the State or any department of any political subdivision thereof, who is authorized to negotiate for the acquisition of real property or any interest therein shall within thirty days after

the execution of the necessary documents involved, file all such documents pertaining to such real property or any interest therein with the department. Two blueprint plans of such real property shall also be filed with the department.

All such documents shall be offered for record by direction of the board and recorded by the registrar of conveyances free of charge.

PART II. DISPOSITIONS, GENERALLY.

A. POLICY AND PLANNING.

Section 32. **Policy.** Unless otherwise specifically authorized in this chapter or by subsequent legislative acts, all dispositions shall be by lease only, disposed of by public auction in accordance with the procedure set forth in sections 14 and 15 of this chapter.

Section 33. **Planning; generally.** Prior to any notice of intended disposition, the board shall:

- (a) Classify the land according to its uses as provided in this chapter;
- (b) Determine the specific use for which the disposition is intended;
- (c) Parcel land into units of minimum size areas related to the intended specific use and sufficient for an economic operation, hereinafter called an "economic unit";
- (d) Determine the requirements for the construction of building or other improvements, which are necessary or desirable to encourage the highest use of the land;
- (e) Determine the upset price or lease rental, based upon the fair market value of the land employed to the specific use for which the disposition is being made, with due consideration for all of the terms and conditions of the disposition;
- (f) Determine the necessary conditions of disposition which will discourage speculation;
- (g) In the case of leases, determine the minimum tenure necessary to support the intended use and the necessity for periodic rent openings in long-term leases to assure the state a fair return;
- (h) Prepare the proposed documents and make them available for public inspection; in the case of leases, serve notice of their preparation and content to the appropriate county board of supervisors or city council where the land to be disposed is located, at least ten days before the board approves the intended disposition;
- (i) Determine, two years before the expiration of the term of any lease, whether the premises are to be demised for the same use under a new lease or whether all or any part thereof is to be reserved for other uses and then promptly notify the lessee of such determination.

Section 34. **Planning; intensive agricultural and pasture uses.** In addition to the requirements set forth in section 33 of this chapter, if the intended disposition is for intensive agricultural or pasture uses, the board shall:

- (a) Make or cause to be made an on-the-ground inspection of the land;
- (b) Secure data or information from the land study bureau relating to such parcel;
- (c) Review any other pertinent information with respect to such land and the surrounding area; and

(d) Based upon information obtained, prepare a written report on the land, which report shall include the following: (1) the class of the land within the specific use for which disposition is intended; (2) the condition of the land with respect to its state of development; (3) existing improvements, if any; (4) extent of uncontrolled erosion if any; (5) nature of forage and (6) extent of infestation with noxious weeds.

B. LEASES.

Section 35. **Lease provisions; generally.** Every lease issued by the board shall contain:

- (a) The specific use to which the land is to be employed;
- (b) The improvements required; provided, that a minimum reasonable time be allowed for the completion of such improvements;
- (c) Restrictions against alienation as set forth in section 36 of this chapter;
- (d) The rent, as established by the board, which shall be payable not more than one year in advance, in quarterly, semi-annual or annual payments;
- (e) Where applicable, adequate protection of forests, watershed areas and hunting preserves, reservation of rights of way and access to other public lands, hunting preserves, or public beaches, and prevention of nuisance and waste; and
- (f) Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the State Constitution and of this chapter.

Section 36. **Lease restrictions; generally.** Except as otherwise provided, the following restrictions shall apply to all leases:

- (a) Options for renewal of terms are prohibited;
- (b) No lease shall be for a longer term than 65 years, except in the case of a residential leasehold which may provide for an initial term of 55 years with the privilege of extension to meet Federal Housing Administration or Veterans Administration requirements, provided, that the aggregate of the initial term and extension shall in no event exceed 75 years;
- (c) No lease shall be made for any land under a lease which has more than one year to run;
- (d) No lease shall be made to any person who is in arrears in the payment of taxes, rents or other obligations owing the state or any of its political subdivisions;
- (e) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided, that, with the approval of the board, the assignment and transfer of a lease or unit thereof may be made if (1) it contains the personal residence of the lessee; or (2) in the case of commercial, industrial, hotel, resort, apartment and other business uses, the lessee was required to put in substantial building improvements; (3) the lessee becomes mentally or physically disabled; or (4) extreme economic hardship is demonstrated to the satisfaction of the board.
- (f) The lease shall be for a specific use only and shall not include waste lands, unless it is impractical to provide otherwise; and
- (g) Mineral and metallic rights and surface and ground water shall be reserved to the state.

The board may, from time to time, upon the issuance of any lease, adopt or modify or eliminate any of the foregoing restrictions to the extent neces-

sary to qualify such lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, Farmers Home Administration, and their respective successors and assigns.

Section 37. Lease restrictions; intensive agricultural and pasture uses. In addition to the restrictions provided in section 36 of this chapter, the following restrictions shall apply to all leases for intensive agricultural and pasture uses :

(a) The lease term shall not exceed 20 years, except that if the type of disposition requires the lessee to occupy the premises as his own personal residence, it may be longer than 20 years, but not in excess of 75 years.

(b) If the land being leased is not immediately productive and requires extensive expenditures for clearing, conditioning of the soil, the securing of water, or the planting of grasses, the lease term may be extended up to an additional 5 years.

(c) The land leased hereunder shall be subject to withdrawal by the board at any time during the term of the lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, including residential, commercial, industrial or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the demised premises; provided, that, upon such withdrawal, or upon such taking which causes any portion of the land originally demised to become unusable for the specific use for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the lessee is destroyed or made unusable in the process of such withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided, further, that no such withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of such crops.

Section 38. Condemnation of leases. The lease shall provide that whenever a portion of the public land under lease is condemned for public purposes by the state, or any county or city and county, or any other governmental agency or subdivision, the rental shall be reduced in proportion to the value of the portion of the premises condemned, and the lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which he is not permitted to harvest and (b) the proportionate value of the lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the lease; provided, that the lessee may, in the alternative, remove and relocate his improvements to the remainder of the lands occupied by him. The foregoing rights of the lessee shall not be exclusive of any other to which he may be entitled by law. Where the portion so taken renders the remainder unsuitable for the uses for which the land was leased, the lessee shall have the option to surrender his lease and be discharged for any further liability therefor; provided, that he may remove his permanent improvements within such reasonable period allowed by the board.

Section 39. Forfeiture; leases. Upon the violation of any condition or term of any lease to be observed or performed by the lessee or tenant, the

board shall, after due notice of default as provided in section 20 of this chapter, and subject to the rights of each holder of record having a security interest as provided in section 21 of this chapter, terminate such lease or tenancy and take possession of the leased land, without demand or previous entry and without legal process, together with all improvements placed thereon and shall retain all rent paid in advance as damages for the violations.

Section 40. Expired leases; holdover. Upon expiration of the lease term, if the leased land is not otherwise disposed of, the board may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms and conditions as the board may prescribe; provided, that if, immediately prior to the expiration of the lease, the land was cultivated with crops having ratoons for at least one cycle, as defined hereinafter, the board may permit the lessee to continue to hold the leased land until the crops from the last remaining cycle have been harvested. The term "cycle" as used in this section means the period required to plant and cultivate the original crop, including the harvesting of the first ratoon, being a period exceeding two years.

Upon expiration of the one year extension, if the board has not yet decided upon the re-lease of the land or reservation for other purposes, the board may issue a temporary permit to the lessee, subject to the provisions of section 52 of this chapter, and the rent and such other terms and conditions as the board may prescribe.

Section 41. Commercial, industrial and other business uses. Leases for commercial, industrial and other business uses shall be made only pursuant to a development plan which provides for careful placement of complementary enterprises consistent with county or city and county zoning requirements. Where a disposition for any such use is made without advance parcelization, the board shall make adequate provisions for the compatibility of the proposed enterprises with any existing surrounding private developments. The board, wherever possible, shall control the landscaping and architecture of the enterprises and protect the public against the creation of nuisances of smoke, soot, irritating odors and gases, and harmful wastes.

Public land may be sold in fee simple for these purposes only when express approval has been granted by legislative enactment.

Section 42. Hotel and resort uses. Public land may be leased for hotel or resort development, if the department of planning finds that the land possesses the amenities for a successful hotel and resort development and that the advantages of its placement for such use outweigh those inherent in free public use in its natural state. Where the land being disposed of for hotel or resort use is divisible into more than one economic unit, such division shall be made prior to disposition, provided, that firm use controls shall be imposed to assure that the development of each unit is compatible with the others. Provisions for community operations of shopping areas, golf courses, and other similar facilities shall be encouraged, with special assessments for the maintenance of these community facilities. Where public land disposed of for hotel or resort use is adjacent to any beach, waterway, or historic monument or landmark, the disposition shall be subject to reservations of public right of way or public access at all times to such beach, waterway, historic monument or landmark.

The board may sell in fee simple raw, unimproved, public land for resort use provided; that;

(a) The board first finds that the land is suitable for resort development and that its use for resort purposes will promote the economic development of the state;

(b) The purchaser submits development plans for the area to be purchased which conform with applicable county or city and county zoning and subdivision requirements;

(c) The board finds upon independent study of these plans that the proposed development is compatible with the developments in the area in general and consistent with good sound planning;

(d) The purchaser agrees to construct, improve and put in all off-site and on-site improvements as may be required by the board which may include any or all of the following: all major and minor auxiliary roads and highways as well as all local streets; all connecting water lines and mains to existing lines and mains; all necessary sewer lines; sewage treatment or disposal plants; all pumping stations; all reservoirs; golf courses; recreational areas; shopping centers; and all other improvements necessary to develop the raw land into an economic resort enterprise;

(e) The purchaser agrees to complete all improvements within the time limitations set by the board.

(f) The title to the land shall remain in the state until the purchaser has made all payments required in the terms of the sale and has constructed the improvements as agreed; provided, that where the purchaser finds it necessary to secure a loan to finance the construction of the improvements the board may issue a patent or deed upon the execution in favor of the state of a performance and payment bond conditioned upon the payment of an amount equal to 100 per cent of the improvement cost. Such bond shall by its terms inure to the benefit of the state.

(g) The board shall sell for resort uses only that portion of the public lands in the proposed resort area which it finds to be absolutely necessary to give the purchaser self-sustaining economic operation; provided, that no public land shall be included in the sale for these purposes which will not actually be improved and used in the resort area for resort purposes.

In any disposition under this section the Board shall give consideration to the needs of the public for beach area above the high water mark.

Upon a finding by the board that the public interest demands it, the board may lease or sell in fee simple such public land by negotiation as provided and subject to the conditions set forth in section 56 of this chapter.

C. RESIDENTIAL SALES.

Section 43. Residence lots; sales or sale. The board may dispose of public land for personal residence purposes (a) by sale in fee simple at public auction as provided in sections 14 and 16 of this chapter, or (b) by lease at public auction or by drawing of lots as provided in sections 15 and 16 of this chapter.

Section 44. Residential sales or leases; planning. Prior to the disposition of public land for residential lots, whether by sale in fee simple or by lease, in addition to the requirements of section 33 of this chapter, the board shall:

(a) Make a determination of the demand for houselots in the area of the intended disposition;

(b) Make a thorough investigation of the costs of such a residential development;

(c) Wherever possible locate the residential development adjacent to an existing urban center;

(d) Subdivide and improve the land, in conformity with county or city and county zoning and subdivision requirements, including the construction of necessary roads; and

(e) Plan the development to meet the economic need and circumstance of the persons for whom the development is intended.

Section 45. **Residence lots, requirements.** In the disposition of lots for residence purposes:

(a) No person shall purchase or lease, directly or indirectly through an agent, nominee, third person or otherwise, any interest in more than one lot.

(b) No person and no unmarried minor child, whose spouse or parent purchases or leases a lot, shall be eligible to purchase or lease any lot.

(c) The board shall require the lessee or purchaser to construct a dwelling of such size and value and within such time as shall be prescribed by the board.

(d) The board shall establish such additional restrictions, requirements or conditions in accordance with the powers granted to it in section 6(f) of this chapter.

Section 46. **Residence lots: unsold; forfeited; surrendered.** Any lot not sold at public auction, or sold and forfeited, or surrendered after sale with the consent of the board, which consent is authorized, may, subject to the provisions of section 21 of this chapter, be disposed of by the board as follows:

(a) The board shall hold such lot without disposition for a period of thirty days, during which time, any person otherwise qualified to bid interested in securing the lot may apply therefor in writing.

(b) Upon the expiration of 30 days, if not more than one person has applied for the lot, the board may dispose the lot to the sole applicant without public auction at not less than the prior upset price; provided, that if the lot is one among several available lots and there are more applicants than available lots, this paragraph shall not apply.

(c) If more than one person has applied for the lot, or if there are more applicants than available lots, upon the expiration of 30 days, the board shall dispose of the lot or all of the available lots, as the case may be, at public auction as provided in sections 14 and 16 of this chapter, at the prior upset price or, if the auction is held more than six months after the date of the prior public auction, at the upset price fixed by a re-appraisal of the lot.

D. MISCELLANEOUS

Section 47. **Exchanges.** (a) Purpose. No exchange of public land for private land shall be made except for public purposes, including (1) consolidation of holdings of public lands; (2) straightening of boundaries of public lands; or (3) acquisition of adequate access for landlocked public lands which have a development potential. Exchanges shall be effected without public auction or public notice. All private lands conveyed to the state by way of exchange shall thereafter become public lands.

(b) Amount. No exchange of public land for private land shall exceed 40 acres in area or \$25,000 in value. No public land shall be exchanged for private land, when such exchange has the effect of leaving public lands of inadequate size for later development. Advance parcelization to avoid the limitations of area or value is deemed improper.

(c) Value. In an exchange of public land for private land, the appraisal of the value of the private land shall be based on its use prior to the exchange,

and the public land exchanged shall be of equal value and of use comparable to that of the private land prior to the exchange. Provided, that, if the use of the private land prior to the exchange is any one of the following, (1) intensive agricultural or (2) pasture or (3) special livestock, and the state has no land within the land district of comparable specific use, the board may exchange public land classified in any other of the three uses set forth above.

(d) Legislative authorization. No exchange of public land for private land shall be made except upon submission of the proposed exchange to the legislature, and the legislature approves the exchange by legislative act.

(e) Exception. Notwithstanding any limitations set forth in this section, the board may exchange public land for Hawaiian Homes Commission's available land of equal value in order to consolidate its holdings or the holdings of the commission or to effectuate better the purposes of this chapter or of the Hawaiian Homes Commission Act of 1920, as amended.

Section 48. **Quitclaim.** The board may, after giving public notice as required in section 16(a) of this chapter, enter into an exchange by way of compromise or equitable settlement of rights of claimants without auction and may quitclaim any and all interests of the state in private land for the purpose of perfecting title to such private land in private individuals who have defective titles; provided, that no quitclaim may issue where the title to private land is subject to reversion to the state or to a right of entry by the state upon breach of condition subsequent or where the title to the private land is conveyed by the state for specific uses or purposes; provided, further, that no exchange or quitclaim may be entered into or made where the interest of the state arises by reason of any provision in a deed or patent issued by the state, which prescribes the specific use to which the land may be put or the specific purpose for which the land was conveyed.

Section 49. **Remnant.** (a) Definition. The term 'remnant' means a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape or other characteristics. A remnant may be (1) land acquired by condemnation which is in excess of the needs for which condemned; (2) vacated, closed, abandoned or discontinued road, street or alley or walk, railroad, ditch or other right of way.

(b) Disposition restriction. No parcel shall be disposed of as a remnant solely for the reason that it lacks an adequate access.

(c) Disposition. Any remnant or portion thereof to be disposed of whether for farm purposes or otherwise, shall first be offered for sale to the abutting owner for a reasonable period of time at a reasonable price based on appraised value. If there is more than one abutting owner who is interested in purchasing the remnant, it shall be sold to the one submitting a sealed bid containing the highest offer above the appraised value. If the remnant abuts more than one parcel, the board may subdivide the remnant so that a portion thereof may be sold to each abutting owner at the appraised value.

(d) Appraisal. The value of the remnant or portion thereof shall be appraised by an independent appraiser, which appraisal shall take into consideration the limited market for such remnant and the resulting enhancement to an abutting owner's property by the addition of the remnant.

Section 50. **Reclamation and disposition of submerged or reclaimed public land.** Any submerged public land or land beneath tidal waters shall not hereafter be reclaimed by private abutting owners.

As to presently reclaimed land, the board, after finding that its disposition is not prejudicial to the best interest of the State, community or area in which such reclaimed land is located and after giving public notice in accordance with section 16(a) of this chapter, of its intention to dispose, may dispose of it, without recourse to public auction, to the abutting owner, by sale or lease; provided, that, if the reclaimed land has been filled in or made with the prior approval of governmental authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value or fair market rental of the submerged public land, but if the reclaimed land has been filled or made otherwise, it shall be disposed of at the fair market value or fair market rental of the reclaimed land.

Section 51. **Land license.**^a The board may issue land licenses affecting public lands. Any such land license shall be disposed of at public auction as provided in sections 14 and 16 of this chapter, for a period not exceeding one year; provided, that the board may issue directly without recourse to public auction, a land license, terminable at will by either the board or licensee, but only upon the express finding that the disposition of the land license at public auction is not feasible or practical. Upon any subsequent application by any other person for the same privilege for which a license has been issued without recourse to public auction, the board shall terminate such land license and offer the same at public auction, unless the board can accommodate the subsequent applicant without recourse to public auction.

Section -52. **Permits.** The board may issue permits for the temporary occupancy of State lands or interest therein on a month-to-month basis under such conditions which will serve the best interests of the State, subject, however, to such restrictions as may from time to time be expressly provided by law. Where such permit on a month-to-month basis extends for a period beyond one year from the date of issuance, any renewal of the permit beyond such one year period shall be only upon approval of the board.

Section -53. **Contract or license for concessions or concession space.** The board may dispose of concession and concession space on public land and shall enter into a contract or issue a license for such concession or concession space only in accordance with the procedure set forth in chapter 7B; provided, that the duration of the contract or license shall be related to the investment required, but in no event to exceed ten years.

Section -54. **Reserved rights and easements.** Notwithstanding any limitations to the contrary, where public land is disposed of with reservation in the state of quarry rights to rock, sand or gravel or an easement, if the board finds that a disposition of such reserved right or easement is not prejudicial to the best interest of the State, community or area in which the land is situated, it may, after giving public notice of the intended disposition as provided in section 16(a) of this chapter, dispose of such reserved right or easement to the owner of the land by sale in fee simple or by lease without public auction.

Section -55. **Mineral and Water rights.** The right to any mineral or surface or ground water shall not be included in any lease, agreement or sale, such right being reserved to the state; provided, that the board may make provisions in such lease, agreement or sale, for the payment of just compensation to the surface owner for improvements taken as a condition precedent to the exercise by the state of any reserved rights to enter, sever and remove minerals or to capture, divert or impound water. Disposition of mineral rights

shall be in accordance with the laws relating thereto enacted or hereafter enacted by the legislature, and, any provision in this chapter to the contrary notwithstanding, no disposition of water rights shall be made, except by permits in accordance with section 52 of this chapter, without the prior approval of the legislature.

Section -56. Disposition by negotiation. A lease of public land may be disposed of through negotiation upon a finding by the board that the public interest demands it. Where the public land is being sought under this section by a sugar or pineapple company, and such company is the owner or operator of a mill or cannery, then, for the purposes of this section, the economic unit shall be that acreage of public land which when taken together with the lands already owned or controlled or available to the company, when cultivated is found by the board to be necessary for the company's optimum mill or cannery operation. In all other cases, public land to be sold under this section shall be in economic unit as provided in section 33(c) of this chapter.

After a determination is made to negotiate the disposition of a lease, the board shall:

(a) Give public notice as in public auction, in accordance with the procedure set forth in section 16(a) of this chapter, of its intention to lease public land through negotiation setting forth the minimum conditions thereunder, the use for which the public land will be leased. Any person interested in securing the lease shall file an application with the board not later than forty-five days after the first publication of the notice;

(b) Establish reasonable criteria for the selection of the lessee;

(c) Determine the applicants who meet the criteria for selection set by the board, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided, that, if any applicant does not notify the board of his objections, and the grounds therefor, in writing, within twenty days of the receipt of the notice, he shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria.

(d) If only one applicant meets the criteria for selection of the lessee, the board may, after notice as provided in (c) above, dispose of the lease by negotiation.

(e) If two or more applicants meet the criteria for the selection of the lessee, the board shall select the lessee who submits the highest offer contained in a sealed bid deposited with the board.

Section -57. Cancellation, surrender. When public land is disposed of with a building requirement and, thereafter, prior to the erection of the building, the land becomes or is discovered to be unfit for the erection of such building, or by change of conditions it becomes impossible or impractical to erect such building, the board may cancel the disposition, repossess the land, and return to the party from the special land and development fund, notwithstanding the order of priority set forth, the aggregate amount of principal and interest theretofore paid by the party.

Whenever land under lease can be re-leased or sold for a higher and better use, or for the existing use to a greater economic benefit to the state, and there is a bona fide applicant interested in such release or sale, the board, subject to the consent of the lessee, his successors or assigns, and each holder of record having a security interest, may cancel the prior lease without compensation to the lessee and re-lease or sell the same.

Section -58. **Sales; payment, default.** When the board is authorized to sell, it may do so upon part credit and part cash, the balance to be paid in stated installments, and deliver possession of the premises under an agreement of sale. The rate of interest on such agreement of sale shall not exceed the current rate of interest. Upon payment of the purchase price, plus interest, and upon due performance of the conditions of such sale, the purchaser shall be entitled to a land patent or a deed to the premises.

If any default is made in payment or in the performance or observance of any condition of sale, the sale or agreement of sale shall be forfeited upon notice of default by the board as provided in section 20 of this chapter.

Section -59. **Waiver of restrictions.** (a) Use. Upon application by the owner or patentee, and consent therefor having been given by each holder of record having a security interest, and after a finding that the public interest will be served thereby, the board may amend or waive the conditions restricting the use of lands contained in any agreement of sale, deed or patent upon the condition that the grantee or patentee pay to the board the difference between the fair market value of the land based on its restricted use and the fair market value with the restrictive condition amended or waived. Except for residential lots, the foregoing authority granted to the board shall not be construed to authorize the board to waive the condition subsequent which provides that upon change in use or breach of a condition, the title automatically reverts to the state.

(b) Residential lots. In case of a residential lot, the board may, subject to the consent of each holder of record having a security interest, waive strict adherence to the use thereof for residential purposes, if the owner or lessee desires to utilize part of the land for agricultural purposes together with his residence, provided, that such agricultural use is not inconsistent or contrary to local applicable health or zoning ordinances. Anything in this chapter to the contrary notwithstanding, in case of a residential lot sold in fee simple, all restrictions relating to the use thereof shall expire 10 years after the date of the issuance of the patent or deed by the State or 15 years after the date of the sale by the state, whichever is sooner, provided, that any change in use of the lot after the 10 or 15 years, as the case may be, shall be in accordance with applicable state and county or city and county zoning requirements.

Section -60. **Covenants against discrimination.** The board shall provide in every patent, deed, lease, agreement, license or permit that the use and enjoyment of the premises being granted shall not be in support of any policy which discriminates against anyone based upon race, creed or color. The board shall not dispose of any public land to any person who practices discrimination based on race, creed or color.

PART III SPECIAL DISPOSITIONS; SALES AND LEASES PERMITTED WITHOUT PUBLIC AUCTION

A. CERTAIN AGRICULTURAL USES, INCLUDING SPECIAL LIVESTOCK AND PASTURE.

Section -61. **Leases, leases with option to purchase, sales permitted; when.** Land intended for disposition as farm lot for truck crops or for horticultural, pasture or special livestock use, may be disposed of by lease, lease with option to purchase, or in fee simple by drawing or lot, without recourse to public auction, notwithstanding any other provision in this

chapter to the contrary; provided, that the right to any values in the land not attributable to these agricultural uses shall be reserved to the state.

Whenever these dispositions are made by drawing or lot, they shall be made only to individuals and then only if the individual, either himself or whose spouse, or both, does not already own lands of comparable use in the state.

Section -62. **Planning.** In addition to the requirements set forth in sections 33 and 34 of this chapter, prior to making these dispositions, the board shall:

(a) Determine the economic feasibility and need for proposed disposition;

(b) Determine the minimum economic unit required for the successful undertaking of the specific use intended, taking into consideration soil fertility, soil condition and availability of water; and

(c) Subdivide the land into economic units and make such improvements as are necessary in conformity with applicable county or city and county zoning and subdivision requirements, including the construction of necessary roads and irrigation facilities.

Section -63. **Restrictions; conditions.** In addition to such other restrictions or conditions that may be established by the board to carry out the purposes of this chapter and of the provisions of the State Constitution, all sale, lease or lease with option to purchase, of a farm lot shall be subject to the following conditions, which shall be covenants running with the land:

(a) The lot shall be used for farm purposes only;

(b) The purchaser or lessee shall reside on the premises granted; provided, that, with the consent of the board, he may live off the premises if his residence is within a reasonable distance therefrom;

(c) The purchaser or lessee shall derive at least one-half of his total annual income from his personal efforts in the production of the crops or products for which production the land is granted to the purchaser or lessee; provided, that this restriction shall not apply if the purchaser or lessee becomes enfeebled or is widowed;

(d) In the case of a lease, those provisions set forth in sections 35, 36 and 37 of this chapter, unless otherwise specifically provided in this section; and

(e) In the case of a fee simple sale, the improvement required and the specific use intended.

(f) For a period of five years after the issuance of a patent or lease, the purchaser or lessee shall not sell, sublet, assign, transfer or in other manner dispose or encumber the whole or any part of the farm lot to any person not qualified to take a farm lot except by way of mortgage, testamentary bequest or devise, intestate succession, or except to a purchaser at or after sale upon the foreclosure of a mortgage.

The violation of any of such restrictions or conditions may be sufficient cause for the board, upon failure of the purchaser or lessee within a reasonable period of time to remedy the default after notice thereof as provided in section 20 of this chapter to take possession of the premises without demand or previous entry and with or without legal process and thereby determine the estate; subject, to the provisions contained in section 21 of this chapter.

Section -64. **Applicants; qualifications of.** A person shall be eligible to apply for a farm if he has the qualifications as follows:

- a. He has been a resident in the State at any time for at least three years ;
 - b. He is a bona fide farmer,
 - (1) Who has not less than two years' experience as a full-time farmer ;
- or
- (2) Who was an owner-operator of an established farm conducting a substantial farming operation and who for a substantial period of his life resided on a farm or depended on farm income for his livelihood ; or
 - (3) Who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding his application obtained the major portion of his income from farming operations ; or
 - (4) Who has a college degree in agriculture ; or
 - (5) Who by reason of ability, experience and training as a vocational trainee is likely to successfully operate a farm ; or
 - (6) One who has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant Act as amended, or as may hereafter be amended for the acquisition of a farm ; or
 - (7) Any veteran (defined herein as a person who served in the military forces of the United States during any war between the United States and any other nation and who was discharged or released therefrom under conditions other than dishonorable) who intends to engage in farming as a principal occupation. His application shall be entitled to preference over the application of non veterans.

c. He meets such other qualifications as the board may prescribe pursuant to section 6 of this chapter.

No person shall be entitled to apply for a farm :

a. Who, or whose husband or wife, has previously taken or held land for farm or homesteading under any certificate, lease or agreement or under any homestead lease or patent based thereon ; or

b. Who, or whose husband or wife, or both of them, owns in fee simple other land in the State, the combined area of which with the land in question exceeds 80 acres ;
provided, that :

a. The ownership of a residence lot or tract, not exceeding three acres in area, shall not disqualify any person otherwise qualified from applying for and receiving any form of farm.

b. Any person who would otherwise qualify to take a farm lot shall not be disqualified by reason of taking, holding or owning land for farm or homesteading or otherwise, if the land so taken, held or owned becomes unusable for the purpose of farming as defined in section 61 of this chapter.

The terms farm and farmer as used herein also means ranch and rancher respectively for the purposes of this section.

Section -65. **Preference right.** Any person otherwise qualified to take a farm lot shall have preference in any drawing for farm lots, if such person :

a. Is a veteran (defined herein as a person who served in the military forces of the United States during any war between the United States and any other nation and who was discharged or released therefrom under conditions other than dishonorable) ; or

b. Has, within a period of not longer than five years prior to the filing of his application, been an owner in possession, or a lessee in possession having an unexpired lease term of more than one year, of farm premises which were taken by any governmental authority for any public purpose

and who was displaced by reason of such taking or which became unuseable for farm purposes because such use was declared a public nuisance or was displaced by reason of a natural disaster.

B. RESIDENTIAL LEASES

Section -66. **Findings and declaration of necessity.** It is hereby found and declared that:

(a) There is a shortage within the state of lands suitable for residential use, available to persons whose incomes and circumstances are such that they do not qualify for or do not require publicly provided low-rent housing accommodations and who are able to secure financing for the construction of their own homes, but who are unable through lack of sufficient financial ability to purchase land in fee simple or to pay the premiums for the rentals under leases offered by private landowners;

(b) This group includes persons whose residential property has been taken for public purposes and who, while they have received the full and fair value of their property, by purchase or condemnation, are unable to replace the property taken with the proceeds paid or other available funds because of the shortage of similar property in the community;

(c) This group also includes those persons who are in low-rent housing accommodations and are discouraged from increasing their annual income for fear that they may forfeit their low-rent public housing;

(d) Experience has demonstrated that when public lands are subdivided and sold in fee simple at public auction, for residential use, the demands for residence property have forced the price of such lands beyond the financial reach of the persons previously mentioned, and that neither the program of opening public lands for sale in fee simple as residence lots, nor the programs for providing low-rent public housing, for urban redevelopment or for urban renewal are adequate or designed to provide the opportunity for such persons to provide themselves with decent, safe, sanitary and uncongested residence accommodations consistent with their financial ability and necessary to provide the environment conducive to promoting their own and their children's good citizenship;

(e) To alleviate this shortage of land suitable for residential use, to promote home ownership on as widespread a basis as possible, and to promote the accomplishment of the purposes of the programs for public low-rent housing, urban redevelopment and urban renewal, including the elimination of slum and other conditions detrimental to the public health, safety and welfare, it is necessary that public lands be made available on terms within the financial means of those residents who, because of the shortage before mentioned, are unable to purchase public or private lands in fee simple or to lease private lands for use for residential purposes. Making public lands available for such purposes, pursuant to the provisions of this Part, is hereby declared to be a public purpose.

Section -67. **Definitions.** As used in this Part, if not inconsistent with the context,

"Residential lease" or "lease" means a residential lease made by the board under the provisions of this Part;

"Lessee" means the lessee under a residential lease and the successors in interest of the lessee;

“Person” means one or more individuals and does not include any partnership, firm or corporation ;

“Appraisers” means one or more, but not more than three, real estate appraisers appointed by the board.

Section -68. Subdivision, improvement and lease of public lands. Any public land suitable for residential use, including single-family, multiple-family, apartment, cluster and row housing and situated in a locality suitable for the general type of residential construction anticipated by the board, may be subdivided and improved in accordance with the provisions of this Part ; provided, that any such lands being subdivided for single-family residence shall be subdivided into lots of not less than 5,000 square feet and not more than 15,000 square feet. Such subdivision shall comply with appropriate county or city and county zoning and subdivision requirements ; provided, that the board may put in such other improvements as may be necessary or desirable. The lots in the subdivision may be leased by the board under residential leases without public auction to persons qualified thereunder, without public notice or advertising, other than as required by this Part.

Section -69. Term, rent and other conditions of residential leases. Residential lease made by the board may be for an initial term of 55 years with the privilege of extension to meet Federal Housing Administration requirements, provided, the aggregate of the initial terms and extension shall in no event exceed 75 years. It may contain such terms and conditions as the board may in its discretion determine, except that the following shall in any event be complied with in each residential lease :

(a) Rent and taxes. The annual rent shall be not less than an amount representing a fair return on the value of the premises at the inception of the rental period under the lease, which value shall be determined by appraisers. The lessee shall pay all real property taxes, assessments for his prorata share of the costs of the improvements of the tract in which the land is located, and such other charges made against or levied upon his premises. ‘Value of the premises’ as used in this section shall mean the fair market value of the raw land, including in such value the prorata share of the cost of improvements only if the lessee has not already been assessed or has not already paid his prorata share thereof or if the state has not assumed such costs.

(b) Construction of residence. Each residential lease shall contain requirements that the lessee construct a residence upon the premises, pursuant to plans and specifications approved by the board and using a licensed contractor, within such time and having such minimum value or ground floor rea as may be determined by the board in its discretion.

(c) Use. Upon the completion of improvements upon the premises, the see shall use and occupy the premises as his residence and shall not rent or use for any business purposes the whole or any part of the premises, except with the written consent of the board.

(d) Alienation. Each residential lease shall contain conditions prohibiting the lessee from subletting or parting with the possession of the whole or any part of the premises and from selling, assigning, transferring or otherwise disposing of or encumbering, except by way of mortgage as hereinafter permitted, any interest in the lease or any improvements erected on the premises, except with the written consent of the board.

(e) Right of purchase. Each residential lease shall also state that no right or privilege of purchasing the fee title to the land demised shall be created by the lease, except as provided in section 75 of this chapter, notwithstanding any other provision of the law to the contrary.

(f) Construction and mortgages. Each residential lease shall provide that the lessee may mortgage the lease and improvements only for the purpose of financing the construction of a residence upon the premises or, after the requirement of construction of a residence upon the premises has been fulfilled, for the purpose of financing the purchase of the lease and improvements. Such mortgages shall be made only to recognized lending institutions and may provide for foreclosure and for sale at such foreclosure to any purchaser, without regard to whether the purchaser at the sale is qualified or disqualified to take a residential lease under this Part. The mortgagee's interest in any such mortgage shall be freely assignable.

(g) Mortgage qualification. The foregoing provisions to the contrary notwithstanding, the board is authorized from time to time, upon the issuance of any such lease, to adopt or modify or eliminate any provision contained in sections 66 to 79 of this chapter, to the extent necessary to qualify such lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, and Veterans Administration, and their respective successors and assigns.

Section -70. **Qualifications of lessees.** To qualify for a residential lease under this part, the lessee shall:

(a) Be of legal age and have at least one person, related to him by blood or marriage and solely dependent upon him for support, who will occupy the premises with the lessee; provided, that this requirement shall not apply to a husband and wife who are joint lessees, even if both are employed;

(b) Be a citizen and a resident of the state for not less than five years immediately preceding the issuance of the lease;

(c) Have a gross income not in excess of \$6,500 per annum, including the gross income of his spouse. In determining gross income, a \$600 exemption for each of his dependents, as determined by the income tax laws of the state, shall be allowed; and

(d) Have such other qualifications as may be established by the board.

Any person who, after taking a residential lease, through change of circumstances, loses the qualifications initially required of him or becomes disqualified to take a residential lease, shall not thereby be required to surrender his residential lease, but shall be entitled to continue to hold the same.

Section -71. **Persons disqualified to take residential leases.** No person shall be qualified to take a residential lease under this part who, or whose husband or wife, or both of them, (a) has previously taken from or held under the territory or state any certificate of occupation, right of purchase lease, cash freehold agreement, special homestead agreement or homestead lease, or patent based on any of the foregoing, or has previously taken residential lease or patent or deed to any residential lot under this part; provided, that a person who has previously taken from or held under the territory or state or under this part any such certificate, lease, agreement, patent or deed to any land shall not be disqualified, if he has been displaced at any time from such land by governmental authority for any public purpose or by reason of any natural disaster; or (b) owns other land in the state suitable for residential use or; (c) owns other land not suitable for

residential uses if the value thereof exceeds the value of the residence lot applied for; or (d) is the lessee under a lease having an unexpired term of more than five (5) years of other land in the state suitable for residential use and which lease does not prohibit the lessee from using the land for such purposes; or (e) had voluntarily sold or otherwise disposed of, within one year prior to the filing of his application, any land or lease described in (b), (c) and (d).

Section -72. **Preference right to residential lease.** In any drawing to determine the person to whom a residential lease is to be made, preference shall be given to an otherwise qualified person, who :

(a) Has, within a period of not longer than five years prior to the filing of his application for a residential lease, been an owner in possession, or a lessee in possession having an unexpired lease term of more than one year, of residential premises which were taken by any governmental authority for any public purpose and who was displaced by reason of such taking; or

(b) Has been displaced by reason of any natural disaster as defined in section 80 of this chapter.

After the above preference, any person who is a citizen of the United States and who is otherwise qualified shall be given preference over non-citizens.

Section -73. **Transfers of title by bequest, devise, intestate succession or by operation of law, and upon foreclosure.** Notwithstanding the prohibitions contained in section 9 of this chapter, title to a residential lease or to the fee of the premises if purchased by the lessee, and to the improvements upon the premises, may be transferred only by testamentary bequest or devise, intestate succession or otherwise by operation of law. No person, corporation, or agency of government, disqualified under sections 70 or 71 of this chapter to take a residential lease, may succeed to and take title to a residential lease and improvements, except by such transfer or by purchasing at or after a sale upon a foreclosure of a mortgage permitted by this part.

If the lessee purchases the fee as provided in section 75 of this chapter, no person, corporation, or agency of government, disqualified under sections 70 and 71 of this chapter, may, without the express written consent of the board, within the ten year period following the issuance to the lessee of a patent or deed in fee simple to the premises, succeed to and take the fee title to the premises formerly leased, and improvements, except by testamentary bequest or devise, intestate succession, or otherwise by operation of law or by purchasing at or after a sale upon the foreclosure of a mortgage permitted by this part.

Section -74. **Notice; drawing.** No residential lease shall be made unless notice of the board's intention to lease; with such details concerning the intended lease and method of application for the lease as the board deems necessary or desirable, is published as provided in section 16(b) of this chapter. The person entitled to the lease shall be determined by drawing from among the qualified applicants who have submitted evidence satisfactory to the board of loan commitments, still in force, from recognized lending institutions to finance the construction of a residence upon the premises. Only those who are entitled to preference may participate in the drawing, and one of them shall be entitled to the lease of the lot offered, or if more than one lot is offered, they shall have their choice among the lots offered,

according to the numbers drawn by them. If there are more lots than qualified applicants entitled to preference, those without preference may participate in the drawing after all preferred qualified applicants have made their choices. Any lease referred to in the published notice which is not taken upon such drawing may thereafter be leased to any qualified applicant for a residential lease having a loan commitment, still in force, from a recognized lending institution to finance the construction of a residence upon the premises, notwithstanding such person was not an applicant at the date of the drawing, without further publication of notice and without further drawing, if such lease is made within one year of the date of the drawing of which notice was published.

Section -75. Purchase of fee title by lessee. At any time after the requirement of construction of a residence upon the premises has been fulfilled and after ten years from the date of the issuance of his residential lease, any residential lessee who is financially able to purchase the fee title to the premises demised to him by his residential lease may, if not in default under the terms of his lease, purchase the fee title at its fair market value determined as of the date of the exercise of his option to purchase. The fair market value shall be determined by appraisers and shall exclude the value of improvements erected by the lessee and shall be determined as if the premises were not subject to the residential lease or to any mortgage made by the lessee. The patent or deed issued upon such purchase shall state that within the ten year period following the date of issuance of the patent or deed, the land or any interest therein shall not, without the written consent of the board, be sold, leased or otherwise transferred to any person disqualified under sections 70 and 71 of this chapter, except, that the lessee may mortgage the premises and improvements, without the board's consent, to recognized lending institutions, which mortgage may be freely assigned by the mortgagee and the fee title sold to any person or corporation or agency of government at or after foreclosure.

Section -76. Cancellation of leases. Whenever the board has reason to believe that any term or condition of a residential lease has been violated, it shall give notice to the lessee of the suspected violation as provided in section 20 of this chapter, and shall afford the lessee an opportunity to be heard. If upon such hearing, the board finds that the lessee has violated the terms and conditions of the lease, it may declare the lessee's interest in the lease and improvements forfeited and order the premises to be vacated within a reasonable time. No such forfeiture shall, however, operate to forfeit the interest of any mortgagee in the lease and improvements, and the board shall pay from the Special Land and Development Fund the amount due upon and secured by such mortgage; provided, that such payment need not be made if a new lease of the premises and improvements is made to a new lessee who is willing to assume, and if the mortgagee is willing to accept the new lessee's assumption of, the mortgage and the debt secured thereby.

Section -77. Surrender of lease. If at any time the lessee desires to surrender his lease and improvements, the board may accept such surrender and purchase the improvements for their fair market value, as determined by appraisers, with funds from the Special Land and Development Fund, provided, the board has a firm offer from a person, who is qualified to take the residential lease under this part, to take the lease and purchase the improvements for not less than the amount to be paid therefor by the board

and who has a commitment from a recognized lending institution to finance such purchase. Upon acceptance of the surrender and purchase of the improvements, the board shall sell such improvements to that person and make a new lease to him.

Section -78. **Approval by board.** All subdivisions of public lands and premises covered by residential leases, all purchases and sales of improvements erected by lessees upon lots under residential leases, and all purchases of the fee titles to the leasehold premises by the lessees, and all sales of such fee simple titles during the ten-year period following issuance of a patent or deed thereupon to any person not disqualified under sections 70 and 71 of this chapter, shall be subject to approval by the board.

Section -79. **Costs of, and realization from, residential leasing.** The board is authorized to expend from the Special Land and Development Fund sufficient moneys to meet all costs of the planning, development and subdivision of public lands for residential leasing, the sale of residential leases and otherwise to effectuate the purposes of this part, and all realizations from residential leases and the selling of any improvements purchased from lessees shall be paid into the fund.

C. DISPOSITION TO VICTIMS OF NATURAL DISASTER

I. DISPOSITION FOR OTHER THAN RESIDENTIAL OR AGRICULTURAL PURPOSES.

Section -80. **Definitions.** As used in this Part III C

(a) 'Disaster area' means an area proclaimed by the governor to be a disaster area;

(b) 'Natural disaster' means any disaster caused by seismic or tidal wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake or flood;

(c) 'Person' means an individual (citizen and non-citizen), partnership, corporation, and association.

Section -81. **Purpose.** It is the purpose of this part, in the public interest, to provide for immediate relocation and rehabilitation of disaster victims by making public lands available in the manner hereinafter provided, when a natural disaster strikes the state and devastates large tracts of lands and causes the necessity for immediate relocation of persons from the devastated areas.

Section -82. **Disposition to victims of natural disaster, when.** Notwithstanding any law to the contrary, the board may dispose of public land to victims of a natural disaster by negotiation and without recourse to public auction for purposes other than the personal residences of the victims or for agricultural purposes as hereinafter provided.

To effectuate such disposition for the purpose of relocating victims on to public lands and placing them in circumstances similar to those which existed prior to the natural disaster the board shall:

(a) Subdivide and improve public lands, including the construction of roads, in conformity with applicable county or city and county zoning and subdivision requirements and good planning;

(b) Lease the lands at fair market rental as determined by the board, based on appraisals by at least one but not more than three disinterested appraisers, provided, that the board shall waive rental for the first two years of the term of the lease;

(c) Limit the size of any lot leased under this part in accord with need and use, provided, that such lot shall not exceed four acres of usable land;

(d) Lease only one lot to a person eligible under this part; provided, that if such person owned, leased or occupied another lot in the devastated area which was used for a different purpose, the board may lease a maximum of two lots to such person if there is a different use for each lot;

(e) Include in the instrument of lease, in addition to other terms and conditions, the following:

(1) The lessee, for the first five years of the term of the lease, shall use the leased land for the same business use or undertaking as that in which the lessee was engaged at the time of the natural disaster or for a use approved by the board;

(2) The lessee shall complete the construction of improvements required under his lease within one year from the commencement of the lease, unless the board extends the time of completion, and if the lessee defaults with respect to the construction of such improvements and fails to remedy or cure such default after proper notice thereof as provided in section 20 of this chapter, the board may, at its option, subject to the provisions of section 21 of this chapter, declare a forfeiture of all the right, title, and interest of the lessee in and to the leased land; and

(3) The lessee shall not assign, mortgage or sublet the whole of the leasehold premises, without the prior approval of the board, provided, that the lessee may sublet a part of the leasehold premises without approval of the board.

(4) The lease rental shall be subject to redetermination and renegotiation during the lease term in the manner and at such intervals as the board may specify in the lease.

Section -83. **Option to purchase.** If private land in a disaster area owned by a person leasing public land under this part is condemned or purchased for a public purpose by a governmental agency within the first two years of the term of the lease of such lessee, such person shall have the option to purchase in fee simple the public land leased under this part.

If private land in a disaster area owned at the time of the natural disaster by a lessee under this part is not condemned or purchased for a public purpose by a governmental agency within the first two years of the term of the lease of such lessee, such person shall have the option to purchase in fee simple the public land leased under this part provided that such lessee first offers the board a period of six months in which to exercise an option to purchase in fee simple his private land in the disaster area which he held at the time of the natural disaster. Such offer shall be made to the board by the lessee within thirty calendar days next following the first two years of the term of the lease of the lessee. The lessee shall then have a period of six months next following the board's rejection or exercise of its option in which to reject or exercise his option to purchase such public lands. The acquisition or purchase of such private land in a disaster area by the board under this part is declared to be for a public purpose.

During the period that the board and the lessee are considering their respective options to purchase, the board shall waive the lease rental of the lessee.

Public land under lease shall be sold and such private land of the lessee shall be purchased at fair market value as determined by appraisal as set

forth in section 17 of this chapter. The fair market value shall not include the value of improvements erected by the lessee and shall be determined as if the premises were not subject to the lease or to any mortgage made by the lessee.

Section -84. **Applications.** All applications for a lease shall be filed with the board within three months after the date of the natural disaster, provided, that the board may extend the time for filing applications for an additional period not to exceed three months; this provision of this section to the contrary notwithstanding, the board may accept all applications filed under this part up to June 30, 1962.

Section -85. **Eligibility.** Any person shall be eligible to apply for a lease under this part if he was an owner, lessee or tenant in actual possession of real property in a disaster area and whose business activity or undertaking, not primarily agricultural in character, was substantially destroyed or made unsuitable on or after May 22, 1960, by a natural disaster and whose property or the property on which he is a lessee or tenant was substantially damaged on or after May 22, 1960, by a natural disaster, so as to render the property unfit or economically unfit for the purpose or use made prior to the disaster, provided that an owner or lessor not in actual possession of his property shall not be eligible unless he first fully releases all lessees or tenants from all obligations under his lease or agreement of tenancy.

Any owner or lessee of real property in a disaster area who was engaged in the business of renting homes or apartments shall be deemed an owner or lessee or tenant in actual possession of real property in a disaster area as provided for in this section.

Property shall be deemed unfit or economically unfit for the purpose or use made prior to the disaster when so determined by the board, which determination shall be final, or if any law, ordinance or regulation of any governmental agency prohibits the construction of improvements on land in a disaster area.

The determination by the board as to who is an eligible applicant shall be final.

Section -86. **Notice of availability of leases; selection of lessees.** Notice of availability of land to be offered to qualified applicants for lease shall be by publication in accordance with the same procedure as set forth in section 16(b) of this chapter, but limited to the county in which the land is situated. The notice shall contain, in addition to such other information as the board deems proper, a reference to the qualification of applicants, a brief description of the land to be leased, its locality, area, and quality, with reference to the survey, and the date by which applications must be filed for a lease of the land. The board shall, as soon as practicable following the closing date for applications, review the qualifications of the applicants, determine their respective needs, fix the terms, covenants, and conditions of leases to be issued, as more particularly provided in section 82 of this chapter, and, within the limits of availability of the land for which notice has been published, issue leases to selected applicants.

Section -87. **Existing public leases.** Where a person has an unexpired lease, including a residential lease, of public land damaged by a natural disaster and rebuilding on such land is not prohibited, the board may negotiate an extension of such lease to make it economically feasible to rebuild, or may, by mutual agreement with the lessee and the holder of record

having security interest, cancel the unexpired term of such lease and negotiate a new lease with such person.

II. DISPOSITION OF PUBLIC LANDS FOR RESIDENTIAL PURPOSES TO VICTIMS OF ANY NATURAL DISASTER

Section -88. **Authorization.** The board may dispose of by sale, lease, or lease with option to purchase, public land through drawing by lots and without recourse to public auction to persons dispossessed or displaced as a result of a natural disaster, as determined by proclamation of the governor, under the following terms and conditions:

(a) The department shall subdivide and improve, including roads, the land to be disposed of;

(b) Such land shall be sold at fair market value or leased at fair market lease rental, as determined by appraisal, based on the land as improved;

(c) The instrument of conveyance or lease shall contain, in addition to the usual terms, the restriction that the land shall be used only for residential purposes for a period of ten years following the date of the conveyance or lease, which restriction shall be a covenant running with the land and enforceable by the board or by any surrounding owner or lessee of public land that is subject to the same restriction;

(d) If the purchaser or lessee decides to sell, lease or sublease the land within ten years from the date of the conveyance or lease, the board shall have the first option to repurchase the interest of the purchaser or lessee at fair market value. In the event the land is acquired by the Federal Housing Administration, pursuant to a contract of mortgage insurance, or is anywise acquired by the Small Business Administration, Federal National Mortgage Association, Veterans Administration, or any bank, or savings and loan institution chartered to do business in the state or by the federal government, this restriction shall be null and void during the period of such ownership, and, to this extent, the board may waive any rights accruing to the state contained in any deed, land patent, sales agreement or lease made pursuant to this part;

(e) The size of any lot sold under the provisions of this part shall not exceed two acres; and

(f) A person eligible under this part may draw one lot for his property destroyed by natural disaster.

Section -89. **Persons dispossessed or displaced.** For the purposes of this part a person dispossessed or displaced by natural disaster means any owner of land in possession or any lessee or tenant of land in possession, who has used the property for residence purpose immediately prior to the date the property was destroyed by natural disaster, and the property so destroyed is deemed unfit for residence purpose. Such persons may purchase or lease public lands under the provisions of this part.

Section -90. **Disposition to governments and governmental agencies; compromises.** Notwithstanding any limitations to the contrary, the board may, without public auction:

(a) Sell public lands at a reasonable price to governments, including the United States, city and county, counties, and other-governmental agencies authorized to hold lands in fee simple;

(b) Lease to such governments and agencies public lands for terms up

to, but not in excess of, sixty-five (65) years at such rental and on such other terms and conditions as the board may determine;

(c) Grant licenses to such governments and agencies on such terms and conditions as the board may determine for road, pipeline, utility, communication cable and other rights of way;

(d) Exchange public lands with such governments and agencies; and

(e) Execute quitclaim deeds to such governments and agencies, with or without consideration, releasing any claim to the property involved made upon disputed legal or equitable grounds, whenever the board in its discretion deems it beneficial to the state.

**PART IV. RELATING TO EXISTING HOMESTEAD RIGHTS;
CONTINUATION THEREOF AND REMOVAL OF
CERTAIN RESTRICTIONS.**

Section -91. **Definition.** As used in this Part:

'Cash freehold' means a right of possession to land under an agreement called a freehold agreement under the provisions of section 73 of the Hawaiian Organic Act, as amended:

'Certificate of occupation' means an instrument preliminary to a homestead lease, giving the applicant possession of land;

'Freeholder' means a person holding land under a freehold agreement;

'Homestead lease' means a lease of land made for a term of nine hundred and ninety-nine years, under provisions of law which were repealed by section 3 of Joint Resolution 12, Session Laws of 1949, ratified by the Congress of the United States by the Act of September 1, 1950 (64 Stat. 572);

'Occupier' means a person entitled to the possession of land under a certificate of occupation.

Section -92. **Release of restrictions.** It being in the public interest, all public land for which any certificate, lease, agreement or patent has heretofore been issued imposing restrictions against alienation and forfeiture provisions prescribed by Public Law 192, 61st Congress, 2d Session, 36 Stat. 444 (1910), and Public Law 234, 76th Congress, 1st Session, 53 Stat. 1126 (1939), (section 73(g) and 73(h) of the Hawaiian Organic Act), be and the same is hereby wholly released from such restrictions and provisions; provided, however, nothing herein contained shall be construed to defeat or in any way impair the interest of any mortgagee or holder of record having a security interest or owner of vested rights in and to the public land affected by the release aforesaid. Though no form of documentation shall be required to effect the release provided by this section, the board is authorized to issue to any owner of such land affected by said release, upon payment of such documentary fees as may be provided by the board, an appropriate certificate of release suitable for recording.

Section -93. **Continuation of rights under existing homestead leases, certificates of occupation, right of purchase leases and cash freehold agreements.**

(a) Issuance of land patents to occupier or lessee of homestead lands. A fee simple patent shall be issued to every existing occupier under a certificate of occupation issued heretofore, and to every lessee under a nine hundred and ninety-nine year homestead lease issued heretofore, of public lands, where such lands have been improved under such certificate or lease, or have been used as a place of residence by such occupier or lessee for an

aggregate continuous period of not less than ten years upon payment to the board of a fair market price, disregarding the value of the improvements made by the occupier or lessee, which price shall be determined by appraisal as provided for in this chapter; provided, that the board may exclude from such patents areas required as roadways to other lots.

(b) Issuance of patent, lessee of right of purchase lease. The Lessee of any existing right of purchase lease shall, at such time and under such conditions as are contained in said lease, be entitled to a land patent from the board conveying to him a fee simple title to the land described in his lease upon the payment of the fair market price of the land as determined by appraisal as provided for in this chapter, provided the lessee has reduced to cultivation twenty-five per cent of the premises and has resided thereon not less than two years and has substantially performed all other conditions of his lease.

(c) Cash freeholds, agreement, patent, conditions. At the end of three years from the date of the payment of the first installment, the holder of a freehold agreement is entitled to a land patent for the premises described therein, if the following conditions, in addition to those set forth herein, have been substantially performed:

(1) Payment of the balance of the purchase price in equal installments, in one, two and three years respectively, from the date of the freehold agreement with interest annually at the rate of four percent; provided, that the freeholder may pay such installment before it is due, and thereby stop the corresponding interest;

(2) Cultivation of not less than twenty-five percent of the area of the premises, and the planting and care of not less than an average of ten timber, shade or fruit trees per acre, if agricultural land, at any one time before the end of the third year, or fencing in the same if pastoral land within such time; provided, that if the premises are classed as pastoral-agricultural land, the foregoing alternative conditions shall apply respectively to the two kinds of land;

(3) Maintenance by the freeholder of his home on the premises from the end of the first to the end of the third year;

(4) Conditions for the prevention of waste, the planting of trees or the protection of trees growing or to be planted on such premises, or for the destruction of vegetable pests that may be on such premises or the prevention of the future introduction of such pests thereon;

(5) Payment of all taxes that may be due on account of the premises.

The holder of a freehold agreement shall allow the land agents to enter and examine the premises at all reasonable times to see that the conditions are being performed. He shall not assign or sublet, conditionally or otherwise, his interest or any part thereof, under the freehold agreement, without the written consent of the board indorsed on such agreement; and provided, further that freeholders having the whole interest in a freehold agreement may at any time when all the conditions thereof to be performed by the freeholder up to such time shall have been substantially performed, surrender to the government such interest by delivery of the freehold agreement to the land agent with the intention to surrender the same clearly indorsed thereon, and signed by them and duly attested. Such surrender shall release the freeholders from all further duty or performance of the conditions of the instrument surrendered. But no such surrender shall be permitted if any such free-

holders are under the age of eighteen years unless such minors are represented by statutory guardians; and provided, further, that any freeholder over the age of eighteen may assign his interest to his cotenants;

(d) Right of purchase lease; termination, forfeiture or surrender. Upon the termination of a right of purchase lease by lapse of time, or upon the forfeiture or surrender of such lease or a freehold agreement, the board may in its discretion and within the limit of its authority open the premises or any part thereof for disposition in the manner or for such uses as provided in this chapter. Before such disposition the fair market value thereof shall be established by appraisal. The value attributable to the improvements in the appraisal shall be paid to the surrendering lessees or freeholders, upon resale of the premises, and the director of the budget shall pay the amount of such valuation upon the requisition of the board out of such funds.

(e) Interests, descent; certificate of occupation or homestead lease. In case of the death of any occupier or lessee under an existing certificate of occupation or existing homestead lease, all the interest of such occupier or lessee, any conveyance, devise or bequest to the contrary notwithstanding, in land held by the decedent by virtue of such certificate of occupation or homestead lease shall vest in the relations of the decedent as follows:

- (1) In the widow or widower;
- (2) If there is no widow or widower, then in the children;
- (3) If there are no children, then in the widows or widowers of the children;
- (4) If there are no such widows or widowers, then in the grandchildren;
- (5) If there are no grandchildren, then in the father;
- (6) If there is no father, then in the mother;
- (7) If there is no mother, then in the brothers and sisters;
- (8) If there are no brothers and sisters, then in the widows or widowers of the brothers and sisters;
- (9) If there are no such widows or widowers, then in the nephews and nieces;
- (10) If there are no nephews or nieces, then in the widows or widowers of the nephews and nieces;
- (11) If there are no such widows or widowers, then in the grandchildren of the brothers and sisters;
- (12) If there are no grandchildren of any brother or sister, then in the state.

All such successors, except the state, shall be subject to the performance of the unperformed conditions of the certificate of occupation, or the homestead lease, in like manner as the decedent would have been subject to such performance if he had continued alive; provided, that if a widow or widower in whom such interest shall have vested as aforesaid, shall thereafter marry again and decease leaving a widower or widow and a child or children of the first marriage surviving, the interest of the deceased shall vest in such child or children; and further provided, that in case two or more persons succeed together to the interest of any occupier or lessee, according to the foregoing provisions, they shall hold the same by joint tenancy so long as two or more shall survive, but upon the death of the last survivor, the estate shall descend as provided above.

(f) Option of cotenant to compel others to buy or sell. In case two or more persons become cotenants under any existing right of purchase lease, certificate of occupation or homestead lease by inheritance or otherwise, any

one or more of such persons less than the whole number may file in the office of the land agent an offer to the remainder of such persons to buy their interest in the premises or to sell them their own interest therein at a stated price according to the proportion of the respective interest in question, and may deposit with the land agent the amount of the offered price in money, with a fee of \$10. The land agent shall thereupon notify the persons to whom the offer is made of the nature of the offer and order them to file with him their answer within sixty days whether they will buy or sell according to the offer. If the persons to whom the offer is made file with the land agent within sixty days of the time of their receiving the notification, their answer stating that they will sell their interest according to the terms of the offer, the land agent shall indorse the fact of the sale with the amount of the consideration on the lease and pay to such persons the amount of the consideration deposited with him according to their individual interest; and the interest of such persons shall thereupon vest in the persons making the offer. The fact of the transfer shall be properly recorded in the official records of the land agent and indorsed upon the lease held by the lessee.

If, however, the persons to whom the offer is made fail to answer within sixty days from the time of their being notified of the offer or within sixty days from the time the notice of the offer mailed to their last known place or places of abode, or shall answer within sixty days that they will buy the interest of the persons making the offer on the terms offered, but fail within sixty days after the notification to deposit the amount representing the value of such interest according to the terms offered, their interest shall vest in the persons making the offer and the amount of the consideration shall be paid by the land agent to them individually or their respective representatives upon application. In such case the fact of the transfer shall be recorded and indorsed as above provided.

In the event that any funds held by the land agent hereunder may not be paid to the persons to whom properly payable, because of the inability of the land agent to locate such persons, such funds shall, after the expiration of one year, be deposited in the department of budget and review of the state and there abide the claim of any person thereto lawfully entitled; provided, that no claim to such funds shall be allowed unless such claim is made within five years after such deposit. Payment of any claim duly filed may be made if the department of budget and review and board concur in finding such claim valid and proper, but if the claimant fails to obtain concurrency of the department of budget and review and board within sixty days of the filing of his claim, he may present a petition to the circuit court of the first judicial circuit in that behalf, notice whereof shall be given to the attorney general, who may appear and defend on behalf of the state, and if the court renders a judgment in favor of such claimant, the department of budget and review shall pay the amount due without interest.

But if the persons to whom the offer is made shall, within sixty days from the time of the notification, make answer to the land agent that they will buy the interest of the offering parties and shall deposit within sixty days with him the amount required for the purpose according to the terms of the offer, the land agent shall indorse and record the fact of the sale as above provided, and pay to the offering parties the amount according to their individual interest; and the interest of the offering parties shall thereupon vest in the answering parties. In such case the consideration money deposited by the offering parties shall be returned to them.

(g) Forfeiture; existing certificate of occupation or homestead lease. The violation of any of the conditions of any existing certificate of occupation or homestead lease shall be sufficient cause for the board upon failure of the occupier or lessee within a reasonable period of time to remedy the default after notice thereof in the manner provided in section 20 of this chapter to take possession of the demised premises without demand or previous entry, with or without legal process, and thereby, subject to the provisions of section 21 of this chapter, terminate the estate created.

(h) Forfeiture; cash freeholds. In the case of default in the payment of any of the installments due on any cash freehold agreement for thirty days after the same are due, or failure of performance of any other conditions, the board may take possession of such premises, upon failure of the freeholder within a reasonable period of time to remedy the default after notice thereof in the manner provided in section 20 of this chapter without demand or previous entry, with or without legal process, and thereby subject to the provisions of section 21 of this chapter, terminate the estate created.

SECTION 3. Repeal of prior laws and exceptions. All statutes in force immediately prior to the effective date of this Act, relating to the management and disposition of public lands, are hereby repealed; except, the following:

- (a) Act 21, Session Laws, First Special Session of 1959.
- (b) Act 6, Session Laws of 1961.

SECTION 4. Preservations of rights and liabilities. The repeal shall not affect any act done, ratified or confirmed or any right accruing or accrued or established, or any action, suit or proceedings had or commenced in any civil cause, prior to the repeal, and all rights and liabilities under any statute embraced in or repealed by this Act shall continue and may be enforced in the same manner and with the same effect as if the repeal had not been made.

SECTION 5. Application of statutes of limitations. No statute of limitations, whether applicable to civil causes or proceedings, or to the prosecution of offenses, or for the recovering of penalties or forfeiture, embraced in, or repealed by this Act shall be affected thereby, and all suits, proceedings and prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the repeal may be commenced and prosecuted with the same effect as if the repeal had not been made.

SECTION 6. Preservation of penalties for offenses, etc. The repeal shall not affect any offense committed or any punishment, penalty or forfeiture incurred, prior to the repeal, under any statute embraced in or repealed by this Act, and every such offense may be prosecuted and punished, and every punishment, penalty or forfeiture imposed and enforced, in the same manner and with the same effect as if the repeal had not been made.

SECTION 7. Special Funds Abolished. All special land funds heretofore created and presently existing are hereby abolished, and all sums therein are hereby transferred to the Special Land and Development Fund created by this Act; provided, that all expenditures heretofore authorized by law to be made from such funds which are abolished by this section may continue to be made in accordance with such law, except that all such future expenditures shall be made from the Special Land and Development Fund.

SECTION 8. Tenure of Present Members of the Board Continued. The members of the board who have been duly appointed by the Governor and confirmed by the Senate, shall continue in office to serve out their respective

terms for which they were appointed; except that the director, after the effective date of this Act, shall no longer be a voting member of the board, nor shall there be any non-voting ex-officio members.

SECTION 9. Severability. The provisions of this Act are declared to be severable and, if any word, sentence or section of this Act or the application thereof to any person, circumstance or property is held invalid for any reason, the validity of the remainder of this Act or the application of such portion to other persons, circumstances or property shall not be affected.

SECTION 10. Effect of Act. The enactment of this Act shall not affect or repeal any Act passed at this session of the legislature prior to the date of the taking effect of this Act, but in so far as such Acts vary from or conflict with any provision contained in this Act, they shall be deemed amended hereby.

SECTION 11. Effective Date. This Act shall take effect upon its approval.

(Approved June 12, 1962.) H.B. 244.