

ACT 68

H. B. 194.

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

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:

The State government is the largest single landowner in the State of Hawaii. Many parcels owned by the State of Hawaii are capable of and should be developed and put into more productive use as soon as possible. There is a

strong demand for residential lands and commercial properties on the island of Oahu. There are significant and growing demands for more resort properties on the neighbor islands in areas owned by the State of Hawaii.

The development of state lands will generate additional income for the State of Hawaii which shall assist materially in the development of the State of Hawaii for the public welfare. In addition, the development of state lands would provide more jobs and economic opportunities for increased numbers of the citizens and would directly benefit the economy of the county in which the lands are located and the economy of the State in general.

In order to achieve the foregoing ends with a minimum burden upon public funds, section 103A-56.1, Revised Laws of Hawaii 1955, (Supp. 1965), was designed among other things to facilitate public land development through private developers, utilizing private financing, which would be repaid, and a fair return realized, from proceeds of sale in fee or lease of the developed lands.

However, section 103A-56.1 has not accomplished its intended purpose in that it has proved to be procedurally burdensome and lacking in the flexibility necessary to attract responsible and prudent developers. Thus, the development of state lands and the productive use of State lands by the citizenry of this State has not progressed as fast or as much as desirable.

Accordingly, this Act is considered an urgency measure deemed necessary in the public interest.

SECTION 2. Section 103A-56.1 of the Revised Laws of Hawaii 1955, as amended, is further amended to read as follows:

A. Development of leasehold project through private developer. Notwithstanding anything in this chapter to the contrary, the board may, by negotiation and without recourse to public auction, with the prior approval of the governor and authorization of the Legislature by concurrent resolution approving a development project, (1) lease public lands, including submerged lands to be reclaimed at the developer's or developers' expense, to a private developer or developers, or (2) enter into a development agreement with a private developer or developers, for development and subdivision of such public lands as a leasehold project for agricultural, industrial, single-family or multiple-family residential, commercial, business or hotel and resort uses, as provided in this subsection.

Prior to leasing any public land to, or entering into a development contract with, a developer or developers, the board shall:

a. Determine (1) whether the lands shall be developed by disposition or contract; (2) the location, area and size of the lands to be developed; (3) the use or uses to which the lands shall be put, which shall be in conformity with the applicable state, city and county or county zoning and subdivision laws, ordinances or regulations; (4) the estimated period of time to construct and complete the development; (5) minimum requirements for on-site and off-site improvements, if any; (6) whether any beach rights-of-way or public

game preserves should be established; and (7) such other terms and conditions as shall be deemed necessary by the board;

b. Set the minimum rental of the lands to be developed on the basis of an appraisal report prepared by an appraiser for the board determining the fair market value of the lands to be developed;

c. Give notice of the proposed disposition or contract by publication 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. Such notice shall invite interested persons to submit applications to be selected as the developer or developers for the project and sealed bids for the development of the lands. The notice shall also state in general terms the size, location and minimum rental of the area to be leased to the developer or developers, the minimum requirements for any required off-site and on-site improvements, the maximum estimated period of time to install and complete the construction of any required improvements, the use or uses to which such lands shall be put, the last date on which applications and sealed bids will be received by the board, which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the disposition or contract may be secured by interested persons.

Each applicant shall include, together with his sealed bid, a financial statement and his performance and experience records in real estate development, provided, that the board may also, in its discretion, require the applicant to submit answers, under oath, to questions contained in a questionnaire prepared by the board; the applicant's sealed bid shall include a development plan in as much detail as possible and including but not limited to the following: his proposal as to how and when he intends to develop the land, including any permitted incremental development, the amount of money he intends to commit to the total project, the method of recovery of his costs and profits, the amount he agrees to pay to lease or contract to develop the land, and the income the State will receive from leases;

d. Establish reasonable criteria for the selection of the private developer or developers;

e. Determine within forty-five days of the last day for filing applications; the applicant or applicants who meet the criteria for selection set by the board, and notify all applicants of its determination within seven days of such 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 ten days of the receipt of such notice, he shall be barred from proceeding to seek legal remedy for an alleged failure of the board to follow the conditions and criteria; and

If only one applicant meets the criteria for selection as the developer, the board may then negotiate the details of the disposition of such public

lands to, or enter into a development contract with, the developer; provided, that the terms of the disposition or contract shall not be less than those proposed by the developer in his application and shall be subject to the concurrence of the governor. If two or more applicants meet the criteria for selection, the board shall consider all of the relevant facts of the disposition or contract, the proposals submitted by each applicant, the experience and financial capability of each applicant and shall within forty-five days from the date of selection of the applicants that met the criteria, select the applicant who submitted the best offer. The board may then negotiate the details of the disposition of such public lands or enter into a development contract with the developer; provided, that the terms of the disposition or contract shall not be less than those proposed by the developer in his application and shall be subject to the concurrence of the governor.

The terms of any disposition or development contract shall include the following, wherever appropriate:

1. The development and subdivision shall comply with appropriate state, county and city and county zoning and subdivision requirements.

2. The developer or developers shall file with the board a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants and conditions of the disposition or development contract.

3. The use or uses to which the land will be put. Development of large, though economic, tracts of land with multiple but complementary uses should be encouraged.

4. The dates on which the developer must submit preliminary plans and final plans and specifications for the total development to the board for approval, which approval shall not be arbitrarily or capriciously withheld. No construction shall commence until the board has approved the final plans and specifications; provided, that with board approval construction on an incremental basis may be permitted.

5. The date of completion of the total development, including the date of completion of any permitted incremental development.

6. The minimum requirements for off-site and on-site improvements that the developer must install, construct and complete by the date of completion of the total development. The board may permit incremental development and establish the minimum requirements for off-site and on-site improvements that must be installed, constructed and completed prior to the date of completion of the total development.

7. In the event of a lease the developer may be permitted, after he has completed construction of any required off-site improvements, to assign or sublease with board approval portions of the leased lands in which the construction of any required off-site improvements have been completed to a purchaser or sublease who shall assume the obligations of the developer relative to the parcel being assigned or subleased, including the construction of any on-site improvements. The board may permit a developer to share in the lease rent for a fixed period in order to recover his costs and profit.

8. A development agreement may provide that the board shall issue a lease to the nominee or nominees of the developer, including himself, pursuant to the terms previously negotiated and agreed upon between the developer and the board, including the lease rent to the lessee and the method of recoupment of expenses and profit by the developer.

9. The board shall lay out and established number of rights-of-way from proposed or 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 leasing or entering into any development contract, 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 may reserve such lands as game preserves. Where the board finds that hunting on such lands would not be consistent with the rights of the lessee or for other good cause, the board need not reserve such lands as game preserves.

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.

In any disposition of beach-front lands, the board shall give consideration to the needs of the public for beach area above and below the high-water mark.

10. The board may include in any development contract or lease, provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in sections 103A-20, 21 and 22, respectively.

11. Such other terms and conditions set by the board.

f. The term "developer" as used in this section shall mean a person, firm, corporation, partnership, association, trust or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for single-family, multiple-family, industrial, hotel and resort, business commercial, or agricultural uses and has the financial ability satisfactory to the board to develop and subdivide land.

B. Fee simple residential development through private developer. Notwithstanding anything in this chapter to the contrary, the board may, by negotiation and without recourse to public auction, with the prior approval of the governor and authorization of the legislature by concurrent resolution approving the development project, dispose of public lands, including submerged lands to be reclaimed at developer's or developers' expense, by sale of the fee, for single-family or multiple-family residential uses, as provided in this subsection.

Prior to the sale in fee of any public land to a developer or developers, the board shall:

a. Determine (1) the location, area and size of the lands to be developed; (2) the use or uses to which the lands shall be put, which shall be in

conformity with the applicable state, city and county or county zoning and subdivision laws, ordinances or regulations; (3) the estimated period of time to construct and complete the development; (4) minimum requirements for on-site and off-site improvements, if any; (5) whether any beach rights-of-way or game preserves should be established; and (6) such other terms and conditions as shall be deemed necessary by the board;

b. Set the minimum sale price of the lands to be developed on the basis of an appraisal report prepared by an appraiser for the board determining the fair market value of the lands to be developed;

c. Give notice of the proposed disposition by publication 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. Such notice shall invite interested persons to submit applications to be selected as the developer or developers for the project and sealed bids for the development of the lands. The notice shall also state in general terms the size, location and minimum sale price of the area to be sold to the developer or developers, the minimum requirements for any required off-site and on-site improvements, the maximum estimated period of time to install and complete the construction of any required improvements, the use or uses to which such lands shall be put, the last date on which applications and sealed bids will be received by the board, which date shall not be less than thirty days or more than ninety days after the last date of publication of such notice, and the times and places at which more detailed information with respect to the disposition may be secured by interested persons.

Each applicant shall include, together with his sealed bid, a financial statement and his performance and experience records in real estate development, provided, that the board may also, in its discretion, require the applicant to submit answers, under oath, to questions contained in a questionnaire prepared by the board; the applicant's sealed bid shall include a development plan in as much detail as possible and including but not limited to the following: his proposal as to how and when he intends to develop the land, including any permitted incremental development, the amount of money he intends to commit to the total project, the method of recovery of his costs and profits, and the amount he agrees to pay to purchase the land;

d. Establish reasonable criteria for the selection of the private developer or developers;

e. Determine within forty-five days of the last day for filing applications, the applicant or applicants who meet the criteria for selection set by the board, and notify all applicants of its determination within seven days of such 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 ten days of the receipt of such notice, he shall be barred from pro-

ceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria; and

If only one applicant meets the criteria for selection as the developer, the board may then negotiate the details of the disposition of such public lands to the developer; provided, that the terms of the disposition shall not be less than those proposed by the developer in his application and shall be subject to the concurrence of the governor. If two or more applicants meet the criteria for selection, the board shall consider all of the relevant facts of the disposition, the proposals submitted by each applicant, the experience and financial capability of each applicant and shall within forty-five days from the date of selection of the applicants that met the criteria, select the applicant who submitted the best offer. The board may then negotiate the details of the disposition of such public lands with the developer; provided, that the terms of the disposition shall not be less than those proposed by the developer in his application and shall be subject to the concurrence of the governor.

The terms of the disposition shall include the following:

1. The development and subdivision shall comply with appropriate state, county and city and county zoning and subdivision requirements;

2. The developer or developers shall file with the board a good and sufficient bond conditioned upon the full and faithful performance of all the terms, covenants and conditions of the disposition;

3. The use or uses to which the land will be put.

4. The dates on which the developer must submit preliminary plans and final plans and specifications for the total development to the board for approval, which approval shall not be arbitrarily or capriciously withheld. No construction shall commence until the board has approved the final plans and specifications; provided, that with board approval construction on an incremental basis may be permitted.

5. The date of completion of the total development, including the date of completion of any permitted incremental development.

6. The minimum requirements for off-site and on-site improvements that the developer must install, construct and complete by the date of completion of the total development. The board may permit incremental development and establish the minimum requirements for off-site and on-site improvements that must be installed, constructed and completed prior to the date of completion of the total development.

7. 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 the developer may assign, with the approval of the board, his sales agreement with the board as security for a loan to finance the balance of or a part of either the purchase price of the land or the cost of improvements, or both; provided, further, that if incremental development is permitted and the developer has completed construction of the required improvements in the increment and is able to pay or has paid for the agreed purchase price of the land within the increment, then the developer

shall be entitled to a land patent or a deed to the land within such completed increment.

8. The board shall lay out and establish over and across such lands a reasonable number of rights-of-way from proposed or 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.

The board may provide for the reservation of any lands within the lands to be disposed as game preserves if the board determines the establishment of such game preserves to be in the public interest.

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

In any disposition of beach-front lands, the board shall give consideration to the needs of the public for beach area above and below the high-water mark.

9. The board may include in any sales agreement provisions concerning notice of breach or default, rights of a holder of a security interest, and consent to mortgage as set forth in sections 103A-20, 21, and 22, respectively.

10. Such other terms and conditions set by the board.

f. The term "developer" as used in this section shall mean a person, firm, corporation, partnership, association, trust or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for single-family or multiple-family residential uses and has the financial ability satisfactory to the board to develop and subdivide land.

SECTION 3. This Act shall take effect on July 1, 1968.

(Approved May 9, 1968.)