

A Bill for an Act Relating to Take-Over Bids.

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

SECTION 1. Section 417E-1, Hawaii Revised Statutes, is amended by amending the definition of "Offeree company" to read:

"(5) "Offeree company" means a corporation incorporated under the laws of the Kingdom, Republic or Territory of Hawaii or under the laws of this State and doing business in this State whose shares are the subject of a take-over bid and which is either (i) subject to regulation by the public utilities commission under chapter 269, 271, or 271G or (ii) owns more than 1,000 acres of real property in any single county or (iii) is subject to the inspection of the bank examiner under chapter 401 or (iv) owns directly or indirectly more than ten per cent of the voting stock of any of the foregoing."

SECTION 2. Section 417E-3, Hawaii Revised Statutes, is amended to read as follows:

**"§417E-3 Registration of take-over bids; disclosure.** (a) It shall be unlawful for any person to make a take-over bid unless the take-over bid has been registered in accordance with the provisions of this chapter.

(b) The commissioner shall receive and act upon applications for registration of take-over bids and may prescribe the forms upon which he may require the applications to be duly signed by the applicant and sworn to by any person having knowledge of the facts and shall be filed in the office of the commissioner.

(c) An application for registration of a take-over bid shall contain the following information and such other information as the commissioner prescribes:

- (1) The name, nationality, address and business experience of the offeror and each associate of the offeror, and the name and address of the offeree company;
- (2) The terms and conditions of the take-over bid, which shall include the applicable provisions of section 417E-2, and a statement of the aggregate consideration the offeror may become bound to pay;
- (3) The source and amount of the funds or other consideration used or to be used in making the take-over bid, and if any part of such funds or consideration is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of making such bid, a description of the transaction and the names of the parties thereto;
- (4) Any plans to sell or mortgage any assets of the offeree company to

finance the take-over bid;

- (5) Any plans or proposals that the offeror may have to liquidate the offeree company, to sell its assets to or merge it with any other person, or to make any other material change in its business or corporate structure;
- (6) The number of shares for which the take-over bid is made which are owned directly or indirectly by the offeror and each associate of the offeror;
- (7) Any information as to any contracts, arrangements, or understandings with any person with respect to any securities of the offeree company, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements puts or calls, guaranties of loans, guaranties against loss or<sup>1</sup> guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof;
- (8) Complete information on the organization of the offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long term debt, financial statements for the current period and for the three most recent annual accounting periods, a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding five years to date, and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past three years, or in any proposed material transactions to which the offeror or any of its subsidiaries was or is to be a party;
- (9) Material information concerning the identity and background of any offeror who is not a corporation, including his material business activities and affiliations during the past three years and a description of any pending legal or administrative proceedings in which the offeror is a party;
- (10) A statement as to whether any filing with respect to the take-over bid has been made pursuant to the laws of the United States or of any other state or territory thereof, and if so, a true copy of each such filing shall accompany the application.

(d) A record of the registration of take-over bids shall be kept in a register to be kept in the office of the commissioner in which register shall also be recorded any orders entered by the commissioner with respect thereto. The register and all

information with respect to the take-over bid registered therein shall be open to public inspection.

(e) At the time of filing the application for registration as prescribed in this section, the applicant shall pay to the commissioner, a fee of one-tenth of one percent of the aggregate consideration which the offeror is bound to pay for the equity securities for which a take-over bid is proposed to be made, but not less than \$200 nor more than \$1,000.

(f) Registration of a take-over bid shall become effective 60 days after the date of filing the application for registration with the commissioner unless delayed by order of the commissioner, or unless prior thereto the commissioner calls a hearing with respect to the take-over bid. The commissioner may call a hearing if he deems it necessary or appropriate for the protection of offerees in this State, and shall call a hearing if so requested by the offeree company, acting by resolution of its board of directors. If a hearing is called, the registration of the take-over bid shall not become effective until so ordered by the commissioner.

(g) If, following the hearing, the commissioner finds that the take-over bid fails to provide for full and fair disclosure to offerees of all material information concerning the take-over bid or that the take-over bid is unfair or inequitable to offerees or will not be made to all stockholders on substantially equal terms or is in violation of this chapter, he shall by order deny registration of the take-over bid. If he finds that the take-over bid provides for full and fair disclosure to offerees of all material information concerning the take-over bid and that the take-over bid is fair and equitable to offerees and is made on substantially equal terms to all stockholders and complies with this chapter, he shall by order register the take-over bid. Registration of the take-over bid shall not be deemed an approval or recommendation of the take-over bid by the commissioner.

(h) Notwithstanding the provisions of subsection (g):

- (1) Registration of a take-over bid with respect to an offeree company which is referred to in clause (i) or clause (iv) of subsection 417E-1(5) of this chapter shall not become effective until the public utilities commission has notified the commissioner of securities in writing of its determination that the public interest would not be adversely affected if the take-over bid succeeds.
- (2) Registration of a take-over bid with respect to an offeree company which is referred to in clause (ii) or clause (iv) of subsection 417E-1(5) of this chapter shall not become effective until the land use commission has notified the commissioner of securities in writing of its determination that the public interest would not be adversely affected if the take-over bid succeeds.
- (3) Registration of a take-over bid with respect to an offeree company which is referred to in clause (iii) or clause (iv) of subsection 417E-1(5) of this chapter shall not become effective until the bank examiner has notified the commissioner of securities in writing of his determination that the public interest would not be adversely affected if the take-over bid succeeds.

In making such determination, the state agency or official required to make the determination shall consider whether the purposes of applicable statutes will be

served, whether the business reputation and financial responsibility of the offeror is such as to command the confidence of the community, whether there will be undue concentration of economic power if the take-over bid succeeds, and whether any changes in management and operations will adversely affect employment in the State."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 22, 1982.)

**Note**

1. So in original.