

ACT 159

H.B. NO. 1604

A Bill for an Act Relating to Public Lands.

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

SECTION 1. The purpose of this Act is to authorize the board of land and natural resources to modify or change the use provisions set forth in intensive agricultural leases executed pursuant to chapter 171, Hawaii Revised Statutes.

The legislature finds that because of changing conditions present in intensive agriculture, the specific use or uses set forth in a lease may no longer be economically desirable or feasible, and many lessees may wish to devote a portion of their lands to alternative agricultural uses. The legislature further finds that such alternative uses will benefit the State because many of the intensive agricultural leases require the lessee to pay a percentage rent in addition to minimum annual rent, and permission to use intensive agricultural land more economically and efficiently will increase State revenues. Therefore, the legislature finds that it is in the public interest to allow lessees, with the consent of the board of land and natural resources and when supported by economic conditions and sound agricultural practices, to use at least some portion of their demised lands for intensive agricultural purposes other than the use or uses set forth in the lease. The authority to modify or change the use provisions in such leases will provide the board with a greater degree of flexibility, ensure that the land owned by the State is used in a more economically efficient manner, and provide the State with increased revenues. The legislature further finds that this ability will also be consistent with the principles set forth in the state agriculture plan which provides for the development of diversified agriculture throughout the State.

SECTION 2. Section 171-36, Hawaii Revised Statutes, is amended to read as follows:

“§171-36 Lease restrictions; generally. (a) Except as otherwise provided, the following restrictions shall apply to all leases:

- (1) Options for renewal of terms are prohibited;
- (2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration requirements; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;
- (3) No lease shall be made for any land under a lease which has more than two years to run;
- (4) 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;
- (5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made if:
 - (A) It contains the personal residence of the lessee;
 - (B) In the case of commercial, industrial, hotel, resort, apartment, and other business uses, the lessee was required to put in substantial building improvements;
 - (C) The lessee becomes mentally or physically disabled;
 - (D) Extreme economic hardship is demonstrated to the satisfaction of the board; or
 - (E) It is to the corporate successor of the lessee;
 provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration paid by the assignee and, if necessary, revise the rent of the demised premises based upon the consideration paid by the assignee; and provided that the rent shall not be revised downward;
- (6) The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee and provided that the rent may not be revised downward;
- (7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise;
- (8) Mineral and metallic rights and surface and ground water shall be reserved to the State; and
- (9) No lease of public lands, including submerged lands, nor any extension of any such lease, shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for such purposes; unless such lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, which indicates the public's right to the use of [such] the pier. The board [shall], at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph. The term "lease", for the

purposes of this paragraph, includes month to month rental agreements and similar tenancies.

(b) The board [may], from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, mariculture, or special livestock lease may (1) modify or eliminate any of the foregoing restrictions, (2) extend or modify the fixed rental period of the lease, or (3) extend the term of the lease to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, Farmers Home Administration, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or any other federal mortgage lending agency qualified to do business in the State, and their respective successors and assigns or to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates; provided that the private lender shall be qualified to do business in the State; provided further that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) The rental shall not be less than the rental for the preceding term; and
- (4) The rules of the board, setting forth any additional terms and conditions which shall insure and promote the purposes of the demised lands.

(c) The board at any time during the term of any intensive agricultural, aquaculture, or mariculture lease and when justified by sound agricultural practices and economic or other circumstances, may permit an alternative agricultural, aquaculture, or mariculture use or uses for any portion or portions of the land demised thereunder. As a condition to permitting alternative uses, the board may require such other modifications, including rental adjustments or changes in the lease as may be necessary to effect or accommodate the alternative use or uses. An alternative use or uses may be allowed by the board upon:

- (1) The application of the lessee;
- (2) Consent of each holder of record having a security interest in the leasehold; and
- (3) A finding by the board that the alternative use or uses are in the public interest.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval and shall apply to any intensive agricultural, aquaculture, and mariculture lease then in effect and thereafter issued.

(Approved June 1, 1988.)