

ACT 159

S.B. NO. 2882

A Bill for an Act Relating to Waikiki.

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

SECTION 1. Section 206X-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Developer” means any person, partnership, cooperative, firm, nonprofit or for-profit corporation, or public agency possessing the competence, expertise, experience, and resources, including financial, personal, and tangible resources, required to carry out the development of a convention center.”

SECTION 2. Chapter 206X, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“[[CHAPTER 206X]]
[WAIKIKI] CONVENTION CENTER AUTHORITY”**

SECTION 3. Sections 206X-2, 206X-3, 206X-10, and 206X-13, Hawaii Revised Statutes, are amended by substituting the terms “convention center authority”, or “convention center district”, or “convention center development revolving fund” for “Waikiki convention center authority”, and “Waikiki convention center district”, and “Waikiki convention center development revolving fund” wherever those terms appear.

SECTION 4. Section 206X-1, Hawaii Revised Statutes, is amended to read as follows:

“[[§206X-1]] Findings and purpose. Tourism has been and probably will remain the mainstay of Hawaii’s economy. Although prospects for the tourism industry appear to be excellent for the foreseeable future, the legislature finds that certain steps should be taken¹ to ensure this continued vitality. The legislature finds and declares that the construction of a world-class convention center facility would strengthen Hawaii’s economy by expanding its market size to convention-going visitors.

Conventioners, because they spend more money per day than other visitors, are exceedingly desirable guests. An added benefit is that most conventions are normally held during the traditional tourist off-season. This influx of convention dollars during the normal tourist off-season results in greater year-round economic stability for all Hawaii.

The existing convention facilities in Hawaii are inadequate for the needs of many convention groups and, therefore, Hawaii has not been able to attract this segment of the market.

The legislature declares that the convention center facility should be [centrally-located within Waikiki] located to best address the needs of prospective conventioners[, and that the most appropriate site is the area generally covering the International Market Place, Coral Reef Hotel, and Kuhio Mall. This site is located in the visitor hub of Waikiki, surrounded by several major hotels and in walking distance from many of the others. In this context, a convention center is presented with the capacity to act in synergism with the surrounding uses. Equally important, the area requires redevelopment. Building a convention center at this site would, thus, serve the dual purposes of providing an easily-accessible convention center in the heart of Waikiki and of reallocating Waikiki real estate to an economically more productive use]. Toward this end, a survey of potentially appropriate sites both in Waikiki; and other areas in the State needs to be undertaken, from which the legislature may select the most appropriate site.

[The legislature finds, then, that the construction of a convention center at the site and the consequent revitalization of that part of Waikiki are acutely desirable for all of Hawaii.] The legislature [further] finds that this project would best be served by the establishment of a new state corporate supervisory agency. The fundamental objective of this agency would be to supervise and regulate the development of a convention center facility [at this site].

The legislature acknowledges that private and public sector cooperation is critical to the feasibility and success of a convention facility. [It finds that the development and financing of a convention facility by the private sector are feasible and desirable so as to avoid expenditure of public funds while fulfilling the State’s goals.] To this end, the legislature believes that the State should invite

convention facility development proposals from [private] developers and enter into appropriate agreements covering [the private sector's] their undertaking of the development and financing of a convention facility for the State [at no cost to the State], in consideration for land use, zoning, and other benefits for development and construction accruing to the site pursuant to the convention center development plan as adopted under this chapter."

SECTION 5. Section 206X-4, Hawaii Revised Statutes, is amended to read as follows:

"[§206X-4] Purpose; powers. (a) The primary purpose of the authority shall be to review for approval the proposed convention center development plan of a [private] developer and to supervise the development by a [private] developer of all development within the convention center district pursuant to the convention center development plan approved by the authority, including the development of a convention center facility which shall include[,] exhibition halls, meeting rooms, a plenary session hall, and support space[, with aggregate gross floor area of at least 625,000 square feet].

(b) Except as otherwise limited by this chapter, the authority also may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (4) Make and alter bylaws for its organization and internal management;
- (5) Make rules with respect to its projects, operations, properties, and facilities, which rules shall be in conformance with chapter 91;
- (6) Through its executive director appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;
- (7) Review and approve the convention center development plan proposed by a [private] developer, for the [Waikiki] convention center district; inspect and approve development within the convention center district for compliance with convention center development plans and rules; and upon dedication of the convention center facility to the State, to manage, operate, and maintain the convention center facility;
- (8) Cause a [private] developer to prepare plans, specifications, and designs[,] for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project, and from time to time to modify such plans, specifications, or designs;
- (9) Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
- (10) Contract for and accept gifts or grants in any form from any public agency, or from any other source;
- (11) Upon the authority determining that a [private] developer, acting in good faith, is unable to develop the convention center facility in cooperation with the holders of any interest in property in the convention center district, and upon making a finding that the acquisition of such property interest is necessary for its use for the purposes

of this chapter, may acquire the property by condemnation pursuant to chapter 101, notwithstanding any contract to the contrary; provided, however, that the valuation of any such property acquired pursuant to the exercise of the authority's power under this subsection shall be done without regard to any increase or decrease in value of the property resulting from the application of this chapter. Property so acquired by condemnation shall not be subject to chapter 171. If the convention center site is acquired partially or wholly by eminent domain action, the [private] developer shall reimburse to the State the sum of money equal to the just compensation or damages for the taking of the convention center site under the provisions of section 101-29;

- (12) Negotiate with the [private] developer for contribution by the [private] developer to defray costs relating to the relocation of persons displaced because of the development;
- (13) Ancillary to the development of the convention center facility, [the authority shall also] permit the development by the [private] developer of the convention center facility, hotels, condominiums, commercial, retail, and office space, and other improvements which would increase the utilization of the convention center facility; [and]
- (14) On behalf of the State, accept the authority to operate, manage, and maintain the convention center facility upon its dedication to the State; provided that it deems this action to be in the best interest of the State;
- (15) Issue revenue bonds, subject to the approval of the legislature. All revenue bonds shall be issued pursuant to part III of chapter 39, except as provided in this part. The revenue bonds shall be issued in the name of the authority and not in the name of the State. The final maturity date of the bonds may be any date not exceeding thirty years from the date of issuance;
- (16) If SECTION 9 of this Act becomes effective, assist the Waikiki task force established thereby, whenever the task force considers convention center matters; and
- (14) (17) Do any and all things necessary to carry out its purposes and exercise the powers given and granted in this chapter."

SECTION 6. Section 206X-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) [There is established the Waikiki convention center district which shall be located in Waikiki, Oahu, at the site covering the International Market Place, Coral Reef Hotel, and the Kuhio Mall comprised of those certain parcels of land more particularly identified as tax map key: 2-6-22: parcels 02, 38, and 43.] The authority shall conduct a survey of potentially appropriate sites both in Waikiki; and other areas in the State and a study of criteria for development within a convention center district and report to the legislature not less than twenty days prior to the convening of the regular session of 1993 with an update of its recommendations of appropriate sites and criteria for development to be approved by the legislature.

(b) The authority shall review for approval the convention center development plan of a [private] developer which [plan] shall include a convention center and other improvements proposed for development within the [Waikiki] conven-

tion center district. In its review of any proposed convention center development plan pursuant to this chapter, the authority shall apply the criteria of the convention center district rules and [the following] any criteria[:] for development within the convention center district established by the legislature.

- (1) The height of any building shall not exceed 400 feet;
- (2) The aggregate floor area of condominium and hotel dwelling units as described in [subsection] paragraph² (3) below shall not exceed two million square feet;
- (3) The aggregate number of dwelling units: (i) shall not be more than 2,500 but not less than 2,000 hotel units, with not more than 550 but not less than 450 condominium units; or (ii) in the alternative, shall not be less than 2,800 hotel units, with no condominium units; or (iii), in the alternative, shall not be more than 1,200 condominium units, with no hotel units; or (iv), in the alternative, shall not be more than 1,200 but not less than 800 hotel units, with not more than 950 but not less than 800 condominium units. Provided, however, the minimum number of condominium units and hotel units described in (i), (ii), (iii),² and (iv) above may be decreased by mutual agreement between the authority and the private developer;
- (4) The aggregate floor area for commercial, retail, and office use shall not exceed 450,000 square feet;
- (5) The convention center facility, including the exhibition halls, meeting rooms, a plenary session hall, and support space, shall have not less than 625,000 square feet;
- (6) The aggregate number of parking spaces for vehicles shall not be less than 2,000 of which not less than fifty per cent of such spaces shall be located within the convention center district; and
- (7) Groundbreaking for the commencement of the development within the convention center district shall not occur before July 1, 1989.]”

SECTION 7. Section 206X-6, Hawaii Revised Statutes, is amended to read as follows:

“§206X-6 **Convention center district rules.** The authority shall establish rules for the development within the convention center district under chapter 91 on health, safety, building, planning, zoning, and land use which, upon final approval by the authority of a convention center development plan, shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon. The convention center development plan approved by the authority shall be made a part of, and shall have the same force and effect as, the rules aforesaid. Any development proposal within the boundaries of the Waikiki special design district and within the designated convention center district under agreement with a [private] developer shall be subject to the requirements of chapter 343 relating to environmental impact statements and shall be provided for in the rules. The environmental impact statement shall include the disclosure of the environmental effects of the proposed development, effects of the proposed development on the economic and social welfare of the community and State including the welfare of persons to be dislocated by the proposed development, effects of the economic activities arising out of the proposed development, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects. Rules adopted under this section shall follow existing law, rules, ordinances, and regulations as closely as is consistent with standards meeting minimum requirements of good

design, pleasant amenities, health, safety, and coordinated development.

For purposes of chapters 501, 502, and 514A, the authority may certify maps and plans of lands and real property interests within the convention center district as having complied with applicable laws and ordinances relating to consolidation, subdivision of lands, and condominium property regimes, and such maps and plans shall be accepted for registration or recordation by the land court and registrar."

SECTION 8. Section 206X-7, Hawaii Revised Statutes, is amended to read as follows:

"§206X-7 Agreement with [private] developer. (a) The authority shall enter into an agreement with a [private] developer [holding a property interest in the lands within the convention center district] for the development and construction of the convention center and all other improvements. The agreement shall include provision for access to, or ownership of, adequate parking facilities in favor of the authority within the convention center district to accommodate the activities of the convention center facility. The development and construction of the improvements within the convention center district shall conform with the convention center development plan approved by the authority.

(b) As a condition and consideration of the right to develop the real property within the convention center district under the agreement, pursuant to this chapter, the [private] developer shall [dedicate, at no cost to the State,] negotiate with the State for the transfer of a marketable real property interest in the convention center facility to the State with warranty of title free and clear of all encumbrances, subject to declaration of condominium property regime, if any, and to such encumbrances and easements as shall be acceptable to the State. For a period [of two years from the date of the dedication,] to be negotiated between the authority and the developer the [private] developer [shall] may manage, operate, and maintain the convention center facility. All profit and loss for the [two-year] period from the management, operation, and maintenance of the convention center facility shall accrue to or be suffered by the [private] developer. The [private] developer shall submit to the authority annual reports, including financial statements, covering the operations of the convention center facility by the [private] developer during the [two-year] period. The [private] developer shall coordinate with the authority on all reservations based on requests for conventions at the convention center facility to occur on dates after the [two-year] period. The authority [shall] may thereafter manage, operate, and maintain the convention center facility.

(c) As a further condition and consideration of the right to develop the real property within the convention center district under the agreement, pursuant to this chapter, the [private] developer shall pay [the] a reasonable sum [of \$5,000,000] determined by the authority as contribution for the payment of costs relating to:

- (1) The temporary or permanent relocation of existing licensees and lessees who are displaced because of the development within the convention center district pursuant to the convention center development plan by the [private] developer; or
 - (2) Settlement payments in lieu of payments provided under paragraph (1) to existing licensees and lessees who are displaced by the [private] developer because of the development within the convention center district pursuant to the convention center development plan;
- provided that each displaced licensee or lessee shall have the option to select

either relocation or a settlement payment.

Upon the approval by the authority of the relocation plan which shall be prepared and submitted by the [private] developer to the authority, the [private] developer shall deliver to the authority for deposit into the [Waikiki] convention center development revolving fund the sum [of \$5,000,000] determined by the authority in the form of a certified check, an irrevocable letter of credit, or surety bond. The sum [of \$5,000,000] determined by the authority shall be used for the implementation of the relocation plan, provided that the sum and all interest accrued thereon shall be refunded to the [private] developer in the event this chapter expires and becomes [null and] void.

The relocation plan shall include agreement by the [private] developer to give every displaced licensee or lessee who does not elect to receive a settlement payment under paragraph (2) an unassignable right of first refusal of any license or lease of space within the convention center district developed and offered for such activities similar in size and nature to the business conducted by the licensee or lessee at the time of displacement unless such right is waived by any licensee or lessee.

The authority shall cause to be established a task force to assist in the implementation of the relocation plan. The task force shall include persons representing agencies, organizations, government, and private interests.”

SECTION 9. The Hawaii Revised Statutes are amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER WAIKIKI TASK FORCE

§ -1 **Findings and purpose.** Tourism has been and will probably remain the mainstay of Hawaii’s economy. Therefore, it is imperative that the Waikiki area, located on the island of Oahu, be revitalized, revamped, and improved in accordance with a suitable master plan in order to remain a major tourist destination in the future.

Waikiki is vital to the overall image of Hawaii and its visitor industry. For these reasons, master planning efforts for Waikiki are presently being pursued. It is also for these reasons that a strategy incorporating catalysts and incentives, which could stimulate funding to implement the proposed master plan and finance the various projects deemed necessary, should be initiated and focused on as soon as possible. Over the years, Waikiki has been one of the world’s foremost tourist destinations and it is in the public interest for it to remain that way.

The legislature finds an immediate need for the establishment of a task force which shall act as a public agency to research, study, explore, and assess all possible ways and means to finance and implement a Waikiki district master plan, taking into consideration the need for a world-class convention center in order to diversify and stabilize the visitor industry.

The incorporation of such a center in the master plan will thereby prevent sudden upward and downward fluctuations in the greatest private revenue generator in the State. Greater reliance on convention visitors would bring in proportionally greater income from the same number of visitors. The resulting steady growth, free from periods of uncontrolled growth and rapid decline would allow for better planning in the future.

§ -2 **Creation of the Waikiki task force.** There is established a temporary task force to be known as the Waikiki task force that shall be placed within

the department of business, economic development, and tourism for administrative purposes and shall cease to operate after June 30, 1994. The Waikiki task force shall:

- (1) Act as a public agency;
- (2) Research, study, explore, and assess all possible ways and means to finance and implement a Waikiki district master plan;
- (3) Develop an overall strategy for implementing and financing a Waikiki district master plan, including a determination of the appropriate method or methods of financing the strategy; and
- (4) Consult the Waikiki convention center authority,² established in chapter 206X, whenever the task force considers convention center matters.

The Waikiki task force shall adopt rules pursuant to chapter 91 as necessary to effectuate the purposes of this Act.

§ -3 Membership. The Waikiki task force shall consist of fifteen voting members selected from the public and private sectors as follows:

- (1) Three members to be selected by the governor;
- (2) Three members to be selected by the mayor of the city and county of Honolulu;
- (3) One member of the senate to be selected by the president of the senate;
- (4) One member of the house of representatives to be selected by the speaker of the house of representatives;
- (5) One member of the Honolulu city council to be selected by the chair of the Honolulu city council;
- (6) Two residents of the Waikiki district, appointed by the governor from a list of four names, of which two are to be submitted by Waikiki neighborhood board no. 9 and two are to be submitted by the Waikiki Residents Association; and
- (7) Four persons who own land within the Waikiki district, appointed by the governor from a list of eight names, of which four are to be submitted by the Waikiki improvement association landowners council from which two are to be selected, and four are to be submitted by the Vision for Waikiki 2020, from which two are to be selected.

Notwithstanding any other provision to the contrary, the governor shall appoint within sixty days of the enactment of this Act a member to any seat for which a member has not been selected by the respective authority within forty-five days of the enactment of this Act.

The task force shall elect its chairperson by majority vote of its members.

§ -4 Waikiki district; established, boundaries. There is established the Waikiki district that shall be bounded by the following streets and landmarks: Atkinson drive from its intersection with Ala Moana boulevard to Kapiolani boulevard, inclusive; Kapiolani boulevard to its intersection with Kalakaua avenue, inclusive; Kalakaua avenue to the Ala Wai canal; along the mauka side of the Ala Wai canal (inclusive of all state lands) from Kalakaua avenue to the Manoa-Palolo drainage canal; the Manoa-Palolo drainage canal to Date street, inclusive; Date street to its intersection with Kapahulu avenue; Kapahulu avenue from its intersection with Date street to its intersection with Paki avenue, inclusive; Paki avenue from Kapahulu avenue to its intersection with Monsarrat avenue, inclusive; Monsarrat avenue, to its intersection with Kalakaua avenue,

inclusive; from the intersection of Monsarrat avenue and Kalakaua avenue to the shoreline; the shoreline from the extension of the eastern boundary of the intersection of Monsarrat avenue and Kalakaua avenue to the Ala Wai boat harbor, inclusive, to the Ala Wai canal drainage into the ocean, inclusive, to the Diamond Head shore of the Waikiki yacht club, to the intersection of the Ala Wai canal and the Ala Moana boulevard bridge, inclusive; Ala Moana boulevard, from the Ala Wai canal to its intersection with Atkinson drive, inclusive.

§ **-5 Special fund created.** There is created a special fund to be known as the Waikiki district special fund that shall consist of all receipts, revenues, and appropriations made for the purposes of this Act. Any of the appropriations and contributions made to the Waikiki district special fund may be used for staff salaries and other expenses, but may not be used for the implementation of the proposed master plan or its projects.

§ **-6 Report.** The Waikiki task force shall submit an update of its findings and recommendations to the legislature and the Honolulu city council no later than January 1, 1994.

§ **-7 Severability.** If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

SECTION 10. Section 3 of Act 96 of the Session Laws of Hawaii, 1988, is amended to read as follows:

"SECTION 3. Unless the [private] developer's plan for the convention center facility is approved by the authority [within three years from the initial empanelling of all of the members of the Waikiki convention center authority,] on or before June 30, 1994, this Act shall automatically expire.

In the event any judicial or quasi-judicial proceeding is commenced regarding the validity of this Act or any section of this Act, or any action of the authority, the running of the [three year] period shall be suspended until a final nonappealable determination is made in said judicial or quasi-judicial proceeding."

SECTION 11. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1992-1993 to be exceeded by \$75,000, or 0.002 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and meets the need provided for by this Act.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000, or so much thereof as may be necessary for the period September 1, 1992 through June 30, 1994, to be deposited into the Waikiki district special fund for the purposes of this Act; provided that no funds shall be made available under this Act unless the private sector provides \$75,000 to be deposited into the Waikiki district special fund for the purposes of this Act; provided further that the implementation of this Act shall not take place before

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the total amounts specified in this Act have been appropriated, contributed, or committed.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval; provided that Sections 9, 11, and 12 shall take effect on September 1, 1992 only if the mayor of the city and county of Honolulu has not organized a broad-based task force that has held its first meeting, is operational, and has provided a status report of its activities, and, in any event, shall be repealed on June 30, 1994; provided further that if said task force has been organized, has held its first meeting, is operational, and has provided a status report of its activities, Sections 9, 11, and 12 shall be void.

(Approved June 8, 1992.)

Notes

1. Prior to amendment "now" appeared here.
2. So in original.