

A Bill for an Act Relating to Noncommercial Piers.

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

SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Private residential noncommercial piers. Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public auction, state submerged lands or lands beneath tidal waters for private residential noncommercial piers on such terms and conditions as may be prescribed by the board.”

SECTION 2. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided[,] by law, 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 county;
- (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 in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;
- (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 in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; 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 including the percentage rent, if applicable, 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; and
 - (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 the pier. The board, 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]."

SECTION 3. Section 171-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter; provided that the authorization of the legislature shall not be required for leases issued under chapter 190D; and provided further that the approval of the governor and authorization of the legislature shall not be required for any grant of easement or lease of state submerged lands or lands beneath tidal waters used for moorings, cables, [or] pipelines[;], or noncommercial piers; provided further that this exemption shall not apply to easements for cables used for interisland electrical transmission or slurry pipelines used for transportive materials, mined at sea, or waste products from the processing of the same.

The lease shall provide that the lands shall be reclaimed at the expense of the lessee. Title to the reclaimed lands shall remain in the State."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval; provided that the authority granted to the department of land and natural resources to enter into lease agreements with owners of private residential noncommercial piers shall be repealed on June 30, 2005, and the amendments made by sections 1, 2, and 3 of this Act to the Hawaii Revised Statutes, shall be repealed as of that date and sections 171-36(a) and 171-53(c), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act; provided further that any lease agreement executed pursuant to this Act prior to June 30, 2005, or any lease extension executed thereon after the repeal of this Act, shall remain exempt from section 171-36(a)(9), Hawaii Revised Statutes, after the repeal of this Act.

(Approved June 20, 2000.)

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Note

1. Edited pursuant to HRS §23G-16.5.