

**ACT 103**

S.B. NO. 2804

A Bill for an Act Relating to Subleasing of Public Lands.

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

SECTION 1. Act 261, Session Laws of Hawaii 2000, is amended as follows:  
1. By amending section 2 to read:

“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; 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~~:
  - (1) 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~~
  - (2) 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~~
  - (3) 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; and
  - (4) The board may waive the requirement to obtain approval for good cause;
- (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."

2. By amending section 5 to read:

“(SECTION 5. This Act shall take effect upon its approval; provided that [the]

- (1) 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]~~;
- (2) The amendments made by sections 1~~[, 2,]~~ and 3 of this Act to the Hawaii Revised Statutes, shall be repealed as of [that date] June 30, 2005, and ~~[sections 171-36(a) and]~~ section 171-53(c), Hawaii Revised Statutes, shall be reenacted in the form in which [they] it read on the day prior to the effective date of this Act; ~~provided further that any~~;<sup>1</sup>

## ACT 103

- (3) The amendment made by section 2 of this Act to section 171-36(a), which deleted paragraph (9), shall be repealed as of June 30, 2005, and paragraph (9) shall be reenacted in the form in which it read on June 19, 2000; and
- (4) 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.”

SECTION 3.<sup>1</sup> Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4.<sup>1</sup> This Act shall take effect upon its approval.

(Approved May 31, 2002.)

### Note

1. So in original.