

ACT 239

A Bill for an Act Relating to Public Lands of the State of Hawaii.

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

SECTION 1. Section 103A-1, Revised Laws of Hawaii 1955, is amended as follows:

(a) By changing lines 17 and 18 of said section to read as follows: " 'Chairman' means the chairman of the board of land and natural resources; "

(b) By changing lines 35 through 41 to read as follows: " 'Land License' means a privilege granted to enter land for certain special purpose such as the removal of timber, soil, sand, gravel, stone, hapuu and plants, but not including water rights, ground or surface, nor removal of minerals, or removal of sand on Oahu. "

SECTION 2. Section 103A-6(h), Revised Laws of Hawaii 1955, is amended to read as follows:

"(h) delegate to the chairman or employees of the department, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board; and"

SECTION 3. The word "director" wherever it appears in Sections 103A-7, 103A-8, 103A-14 and 103A-24, Revised Laws of Hawaii 1955, is amended to read "chairman."

SECTION 4. Section 103A-32, Revised Laws of Hawaii 1955 is amended by deleting the reference to "103A-15" and substituting in its place the following: "103A-16."

SECTION 5. Section 103A-54, Revised Laws of Hawaii 1955, is amended by deleting the reference to "Section 103A-16(a)" and substituting in its place the following: "Section 103A-16(c)."

SECTION 6. Section 103A-60, Revised Laws of Hawaii 1955, is amended to read as follows:

"Section 103A-60. Covenants against discrimination. The board shall provide in every patent, deed, lease, agreement, license or permit that the use and enjoyment of the premises being granted shall not be in support of any policy which discriminates against anyone based upon race, creed, color or national origin. The board shall not dispose of any public land to any person who practices discrimination based upon race, creed, color or national origin."

SECTION 7. Section 103A-73, Revised Laws of Hawaii 1955, is amended by deleting the reference to "Section 103A-9" in line 3 and substituting in its place the following: "Section 103A-69."

SECTION 8. Section 103A-11, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-11. Public purposes, lands set aside by the governor; management. The governor may, with the prior approval of the board, set aside public lands to any department or agency of the State, the city and county, county or other political subdivisions of the State for public use or purpose. All withdrawals of such lands or portions thereof so set aside shall be made by the governor.

Lands while so set aside for such use or purpose or when acquired for roads and streets shall be managed by the department, agency, city and county, county or other political subdivisions of the State having jurisdiction thereof, unless otherwise provided by law. Such department, agency of the State, the city and county, county or other political subdivision of the State in managing such lands shall be authorized to exercise all of the powers vested in the board in regard to the issuance of leases, licenses, revocable permits, concessions or rights of entry covering such lands for such use as may be consistent with the purposes for which the lands were set aside on the same terms, conditions and restrictions applicable to the disposition of public lands, all such dispositions being subject to the approval of the board. If, at the time of the disposition of any such leases the board shall have approved the same, any order withdrawing or setting aside any or all of such lands for any other public purpose shall be made subject to such leases. Subject to the provisions of section 5(f) of the Act of March 18, 1959 (73 Stat. 6), all proceeds from such lands shall be deposited into the appropriate funds provided by law.

The provisions of this section shall also apply where the purposes are the uses and purposes of the United States; provided, however, that all revenues derived from such lands and improvements thereon shall be paid to the department by the United States.

Whenever lands set aside for a public purpose to the various departments and agencies of the State, or to any city and county, county or other political subdivisions of the State, or to the United States, are not being utilized for the public purpose stated, the order setting aside such lands shall be withdrawn and returned to the department.

The power granted to the governor in this section to set aside or withdraw public lands shall be exercised subject to disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of such setting aside or withdrawal.

The board shall have the power to dispose of any and all real property interest in lands set aside to any department agency of the State, city and county, county or other political subdivisions of the State where the disposition is for a use which is consistent or inconsistent with the purpose for which the land was set aside. All funds

derived from disposition by the board shall be deposited in the general fund of the State or be paid to the appropriate account; provided, that all such dispositions shall be with the prior written approval of the department, agency, city and county, county or other political subdivisions of the State and the governor."

SECTION 9. The first sentence of section 103A-16 (c) is amended to read as follows:

"Notice of a proposed disposition by negotiation shall be published at least once in each of three successive weeks in a newspaper of general circulation in the State and in addition in a newspaper of general circulation in the appropriate county if the land is situated in the first, second and fourth districts; provided, that such notices are not required for revocable permits, remnants and exchanges with governments and governmental agencies as provided in section 103A-90(d)".

SECTION 10. Section 103A-17, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-17. Appraisals.

(a) Public auction. The appraisal of public lands for sale or lease at public auction for the determination of the upset price may be performed by an employee of the board qualified to appraise lands, or by one but not more than three disinterested appraisers whose services shall be contracted for by the board. No such lands shall be sold or leased for a sum less than the value fixed by appraisal; provided, that for any sale or lease at public auction, the board may establish the upset sale or rental price at less than the appraisal value and the land may be sold or leased at such price;

(b) Drawing or negotiation. The sale price or lease rental of lands to be disposed of by drawing or by negotiation shall be no less than the value determined by a disinterested appraiser or appraisers whose services shall be contracted for by the board, and any further appraisal, made at the request of the purchaser and with the approval of the board shall be at the cost of the party requesting such additional appraisal;

(c) Repurchase. In the repurchases of any land by the board, the board shall have the option to repurchase such land for the original sales price or the fair market value at the time of repurchase, whichever is the lower. Any improvements affixed to the realty shall be purchased at their fair market value. At the time of the repurchase, the fair market value of the land, and the improvements, if any, shall be determined by a qualified appraiser whose services shall be contracted for by the board; provided, should the owner fail to agree upon such value, he may appoint his own appraiser who together with the board's appraiser shall appoint a third appraiser, and the value shall be determined by arbitration as provided in chapter 188. The owner shall pay for his own appraiser and the cost of the third appraiser shall be borne equally;

(d) Reopening. In the event of reopening of the rental to be paid on a lease, the rental for any ensuing period shall be the rental for

the immediately preceding period or the fair market rental at the time of reopening, whichever is the higher. At the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the board; provided, that should the lessee fail to agree upon such fair market rental, he may appoint his own appraiser who together with the board's appraiser shall appoint a third appraiser and the fair market rental shall be determined by arbitration as provided in chapter 188. The lessee shall pay for his own appraiser and the cost of the third appraiser shall be borne equally;

(e) Purchase. The appraisal of private property to be acquired by the board may be performed by one but not more than three disinterested appraisers whose services shall be contracted for by the board and no land shall be purchased for a sum greater than the highest value fixed by such appraiser or appraisers; provided, that the board may, after a review of such appraisals by the appraiser or appraisers or the attorney general, purchase such property at a value greater than such highest value if the higher value is determined by the appraiser or appraisers or the attorney general to be justified and within the range of market value; provided further that this limitation shall not apply where acquisition is by condemnation;

(f) Whenever more than one appraiser is appointed each shall prepare and submit an independent appraisal. All appraisal reports shall be available for study by the public."

SECTION 11. Section 103A-20, Revised Laws of Hawaii 1955, is amended by deleting the word "ninety" appearing in lines 16 and 18 of said section and substituting the word "sixty" in its place.

SECTION 12. Section 103A-21, Revised Laws of Hawaii 1955, is amended by deleting the word "ninety" appearing in line 17 and substituting the word "sixty" in its place.

SECTION 13. Section 103A-22, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-22. Consent to mortgage. Whenever under any of the provisions of this chapter or under the provisions of any lease, license, permit or other instrument issued by the board, consent of the State is required as a condition precedent to the mortgage of, or the creation of a security interest in public land, the board may, upon due application, grant such consent, and if the mortgage or security interest is to a recognized lending institution authorized to do business as a lending institution in either the State or elsewhere in the United States, the consent may extend to foreclosure and sale at such foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified under the provisions of this chapter to lease, own or otherwise acquire and hold the land or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" includes an insurer or guarantor of the obligation or condition of such mortgage, including the

Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State or elsewhere in the United States; provided, that the consent to mortgage to a nongovernmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

Notwithstanding any provision in this chapter to the contrary, in leases or sales for residential purposes, the board may waive or modify any restrictions of such lease or sale or any restrictions contained in any such lease or sale if such waiver or modification is necessary to enable any of the aforementioned federal agencies or any lending institution authorized to do business in the State or elsewhere in the United States to participate in any loan secured by a mortgage on the land or the leasehold interest; provided, any such waiver or modification shall not confer any greater rights or powers in the holder than those which would be required by the Federal Housing Administration or the Farmers Home Administration."

SECTION 14. Section 103A-26, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-26. Rights-of-way to the sea and game preserves. Prior to the disposition of any public lands, the board shall lay out and establish over and across such lands a reasonable number of rights-of-way from established highways to the public beaches and game preserves in order that the right of the people to utilize the public beach or beaches and public game preserves shall be protected.

Prior to the leasing of any lands, the board shall determine the feasibility of hunting on such lands, and if any of them is suitable for hunting or may during the term of the lease become suitable for hunting, the board may reserve such lands as game preserves. Where the board finds that hunting on such lands would not be consistent with the rights of the lessee or for other good cause, the board need not reserve such lands as game preserves.

The cost of such rights-of-way and any fencing which may be required shall be borne by the State, lessee or jointly as the board may deem appropriate prior to the leasing of such lands."

SECTION 15. Section 103A-30, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-30. Acquisition of real property; general. The board shall have the exclusive responsibility of acquiring, including by way of dedications (a) all real property or any interest therein and the improvements thereon, if any, required by the State for public purposes, including real property together with improvements, if any, in excess of that needed for such public use in cases where small remnants would otherwise be left or where other justifiable cause necessitates such acquisition to protect and preserve the contemplated improvements, or public policy demands such acquisition in connection with such improvements, (b) encumbrances, in the form of leases,

licenses or otherwise on public lands, needed by any state department or agency for public purposes or for the disposition for houselots or for economic development.

The board shall upon the request of and with the funds from such state department or agency, effectuate all acquisitions as provided under this section.

A state department or agency may directly acquire such real property for its purposes whenever such acquisition by such department or agency is required to conform to mandatory requirements of the United States in the case where federal funds are furnished to such department or agency.

Property which may be acquired under this section includes all real property together with all structures and improvements thereon, franchises or appurtenances thereunto belonging, water, water rights, easements and interests in land of every nature."

SECTION 16. Section 103A-33, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-33. Planning; generally. Prior to any notice of intended disposition, the board shall:

(a) Classify the land according to its use or uses as provided in this chapter;

(b) Determine the specific use or uses for which the disposition is intended;

(c) Parcel land into units of minimum size areas related to the intended specific use or uses and sufficient for an economic operation, hereinafter called an 'economic unit';

(d) Determine the requirements for the construction of building or other improvements, which are necessary or desirable to encourage the highest use of the land;

(e) Determine the upset price or lease rental, based upon the fair market value of the land employed to the specific use or uses for which the disposition is being made, with due consideration for all of the terms and conditions of the disposition;

(f) Determine the necessary conditions of disposition which will discourage speculation;

(g) In the case of leases, determine the minimum tenure necessary to support the intended use or uses and the necessity for periodic rent openings in long-term leases to assure the State a fair return;

(h) Prepare the proposed documents and make them available for public inspection;

(i) Determine, two years before the expiration of the term of any lease, whether the premises are to be demised for the same use or uses under a new lease or whether all or any part thereof is to be reserved for other use or uses and then promptly notify the lessee of such determination."

SECTION 17. Section 103A-35, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-35. Lease provisions; generally. Every lease issued by the board shall contain:

(a) The specific use or uses to which the land is to be employed;

(b) The improvements required; provided, that a minimum reasonable time be allowed for the completion of such improvements;

(c) Restrictions against alienation as set forth in section 103A-36;

(d) The rent, as established by the board or at public auction, which shall be payable not more than one year in advance, in quarterly, semi-annual or annual payments;

(e) Where applicable, adequate protection of forests, watershed areas and hunting preserves, reservation of rights-of-way and access to other public lands, hunting preserves, or public beaches, and prevention of nuisance and waste; and

(f) Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the State Constitution and of this Chapter."

SECTION 18. Section 103A-36, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-36. Lease restrictions; generally. Except as otherwise provided, the following restrictions shall apply to all leases:

(a) Options for renewal of terms are prohibited;

(b) 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 Federal Housing Administration, Federal National Mortgage Association or Veterans Administration requirements, provided, that the aggregate of the initial term and extension shall in no event exceed seventy-five years;

(c) No lease shall be made for any land under a lease which has more than one year to run;

(d) 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;

(e) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided, that with the approval of the board, the assignment and transfer of a lease or unit thereof may be made if (1) it contains the personal residence of the lessee; or (2) in the case of commercial, industrial, hotel, resort, apartment and other business uses, the lessee was required to put in substantial building improvements; (3) the lessee becomes mentally or physically disabled; (4) extreme economic hardship is demonstrated to the satisfaction of the board; or (5) it is to the corporate successor of the lessee;

(f) 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 such approval, the board shall have the right to review and approve the rent to be charged to the sublessee and 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; provided, however, that the rent may not be revised downward;

(g) The lease shall be for a specific use or uses and shall not in-

clude waste lands, unless it is impractical to provide otherwise;

(h) Mineral and metallic rights and surface and ground water shall be reserved to the State;

The board may, from time to time, upon the issuance of any lease, modify or eliminate any of the foregoing restrictions to the extent necessary to qualify such lease for mortgage lending or guaranty purposes with the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, Farmers Home Administration and their respective successors and assigns."

SECTION 19. Section 103A-37, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-37. Lease restrictions; intensive agricultural and pasture uses. In addition to the restrictions provided in section 103A-36, the following restrictions shall apply to all leases for intensive agricultural and pasture uses:

(a) The lease term shall not exceed twenty-five years, except that if the type of disposition requires the lessee to occupy the premises as his own personal residence, it may be longer than twenty-five years, but not in excess of seventy-five years;

(b) If the land being leased is not immediately productive and requires extensive expenditures for clearing, conditioning of the soil, the securing of water, the planting of grasses, or the construction of improvements, as the result of which a longer term is necessary to amortize the lessee's investment, then the lease term may be longer than twenty-five years, but not in excess of thirty-five years;

(c) The land leased hereunder, or any portion thereof, shall be subject to withdrawal by the board at any time during the term of the lease with reasonable notice and without compensation, except as provided herein, for public uses or purposes, including residential, commercial, industrial or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the demised premises; provided, that upon such withdrawal, or upon such taking which causes any portion of the land originally demised to become unusable for the specific use or uses for which it was demised, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the lessee is destroyed or made unusable in the process of such withdrawal or taking, the proportionate value thereof shall be paid based upon the unexpired term of the lease; provided further, that no such withdrawal or taking shall be had as to those portions of the land which are then under cultivation with crops until the crops are harvested, unless the board pays to the lessee the value of such crops."

SECTION 20. The second paragraph of section 103A-41, Revised Laws of Hawaii 1955, is amended to read as follows:

"The board may, with the prior approval of the governor and subject to disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both in any regular or special session next following the date of disposition, sell public land in fee simple for commercial, industrial or other business uses."

SECTION 21. The second paragraph of section 103A-42, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

"The board may, with the prior approval of the governor, and subject to disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of vote,* in any regular session next following the date of disposition, sell in fee simple or lease with option to purchase, raw, unimproved public land for hotel and resort use; provided that:"

SECTION 22. Section 103A-42.5, Revised Laws of Hawaii 1955, as amended, is hereby amended to read as follows:

"**Sec. 103A-42.5. Lease of camp sites or sites for youth athletic activities.** The board may directly lease without recourse to public auction to any eleemosynary or religious organization camp sites or sites for youth athletic activities in a state park area or on lands under the control of the department at nominal consideration. Where the lease is for camp sites, the lease shall provide that the lessee shall permit the public to use such camp sites at the rates approved by the board in its rules and regulations. Except as provided herein, the terms and conditions of sections 103A-33, 103A-35 and 103A-36 shall apply."

SECTION 23. Section 103A-44, Revised Laws of Hawaii 1955, as amended by Act 47, Session Laws of Hawaii 1964, is hereby further amended by deleting the last paragraph of said section.

SECTION 24. Chapter 103A, Revised Laws of Hawaii 1955, as amended, is further amended by adding a new section to read as follows:

"**Sec. 103A-44.5. Residence lots; improvement districts.** Notwithstanding any provision of law to the contrary, the board of land and natural resources is authorized, in like manner and subject to the same conditions, including the imposition of liens and the payment of costs, as any subdivider of private lands, to petition for the construction of necessary subdivision improvements pursuant to applicable improvement district statutes or ordinances of any county or city and county in subdividing public lands for residential purposes. The board of land and natural resources shall dispose of the residential lots so improved subject to liens consisting of the improvement assessments. For the purpose of this section the board is authorized to encumber and impose liens on public lands."

SECTION 25. Section 103A-47, Revised Laws of Hawaii 1955, is amended to read as follows:

* So in original. Probably should read "both."

“Sec. 103A-47. Exchanges. (a) Purpose. No exchange of public land for private land shall be made except for public purposes, including, but not limited to (1) consolidation of holdings of public lands; (2) straightening of boundaries of public lands; or (3) acquisition of adequate access for landlocked public lands which have development potential. Exchanges shall be effected without public auction. Public notice of any proposed exchange shall be given in accordance with the applicable provisions set forth in section 103A-16(c). All private lands conveyed to the State by way of exchange shall thereafter become public lands;

(b) Value. The public land exchanged shall be of equal value and of use comparable to that of the private land prior to the exchange. Provided, that if the use of private land prior to the exchange is any one of the following (1) intensive agricultural or (2) pasture or (3) special livestock, and the State has no land within the land district of comparable specific use, the board may exchange public land classified in any other of the three uses set forth above. In any exchange, the value of the private land to be exchanged for public land shall be based upon the assessed value of such private land as shown in the records of the department of taxation, which value shall be adjusted to 100% of fair market value;

(c) Legislative disapproval. Any exchange of public land for private land shall be subject to disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both in any regular or special session next following the date of exchange.

(d) Exception. Notwithstanding any limitations set forth in this section, the board may exchange public land for Hawaiian homes commission's available land of equal value in order to consolidate its holdings or the holdings of the commission or to effectuate better the purposes of this chapter or of the Hawaiian Homes Commission Act of 1920, as amended.”

SECTION 26. Section 103A-48, Revised Laws of Hawaii 1955, is amended to read as follows:

“Sec. 103A-48. Quitclaim. The board may, after giving public notice as required in section 103A-16(c); (a) quitclaim public lands by deed or land patent in exchange for deeds of private lands by way of compromise or equitable settlement of rights of claimants without auction; (b) execute quitclaim deeds quitclaiming any and all interests of the State in private land for the purpose of perfecting title to such private land in private individuals who have defective titles; provided, that no quitclaim may issue where the title to private land is subject to reversion to the State or to a right of entry by the State upon breach of condition subsequent or where the title to the private land is conveyed by the State for specific uses or purposes; provided further, that no exchange or quitclaim may be entered into or made where the interest of the State arises by reason of any provision in a deed or patent issued by the State, which prescribes the specific use to which the land may be put or the specific purpose for which the

land was conveyed; provided further, that any exchange or quitclaim shall be subject to disapproval by the legislature by a two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of such exchange or quitclaim."

SECTION 27. Section 103A-49, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-49. Remnant. (a) Definition. The term 'remnant' means a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape or other characteristics. A remnant may be (1) land acquired by condemnation which is in excess of the needs for which condemned; (2) vacated, closed, abandoned or discontinued road, street or alley or walk, railroad, ditch or other right of way;

(b) Disposition restriction. No parcel shall be disposed of as a remnant solely for the reason that it lacks an adequate access;

(c) Disposition. Remnants or portions thereof may be disposed of by the board without recourse to public auction in the manner set forth herein. Any remnant or portion thereof to be disposed of shall be first offered for sale to the abutting owner for a reasonable period of time at a reasonable price based on appraised value. If there is more than one abutting owner who is interested in purchasing the remnant, it shall be sold to the one submitting a sealed bid containing the highest offer above the appraised value. If the remnant abuts more than one parcel, the board may subdivide the remnant so that a portion thereof may be sold to each abutting owner at the appraised value.

(d) Appraisal. The value of the remnant or portion thereof shall be appraised by an independent appraiser, which appraisal shall take into consideration the limited market for such remnant and the resulting enhancement to an abutting owner's property by the addition of the remnant."

SECTION 28. Section 103A-50, Revised Laws of Hawaii 1955, is amended to read as follows:

"Sec. 103A-50. Reclamation and disposition of submerged or reclaimed public land. (a) Any submerged public land or land beneath tidal water shall not hereafter be reclaimed by private abutting owners, except as hereinafter provided.

(b) As to presently reclaimed land, the board, after finding that its disposition is not prejudicial to the best interest of the State, community or area in which such reclaimed land is located and after giving public notice in accordance with section 103A-16 (c) of its intention to dispose, may dispose of it, without recourse to public auction, to the abutting owner, by sale or lease; provided that, if the reclaimed land has been filled in or made with the prior approval of government authorities, and not otherwise filled in or made contrary to the public interest, it may be disposed of at fair market value or fair market

rental of the submerged public land, but if the reclaimed land has been filled or made otherwise, it shall be disposed of at the fair market value or fair market rental of the reclaimed land.

(c) The board may, with the prior approval of the governor, lease submerged lands, and lands beneath tidal waters which it deems are suitable for reclamation, under the terms, conditions and restrictions provided in this chapter. The lease shall provide that the lands shall be reclaimed at the expense of the lessee. Title to such reclaimed lands shall remain in the State.

(d) Whenever in connection with reclaimed lands or the reclamation of submerged lands or lands beneath tidal waters by authority of law, the board deems it advantageous to the State in order to settle the rights (littoral or otherwise), if any, of an abutting owner, to create public beaches, or to consolidate the holdings of public lands in the vicinity or provide public ways or access to the public lands, it may, with the prior approval of the governor, sell, lease, or transfer by way of an exchange, without recourse to public auction but subject to the limitations contained in section 103A-47 and to the other provisions of this chapter, lands having the status of public lands."

SECTION 29. Section 103A-51, Revised Laws of Hawaii 1955, is hereby amended to read as follows:

"Sec. 103A-51. Land license. The board may issue land licenses affecting public lands. Any such land license shall be disposed of at public auction as provided in sections 103A-14 and 103A-16 for a period not exceeding ten years; provided, that the board may issue directly, without recourse to public auction, a land license the period of which shall not exceed one year, but only upon the express finding that the disposition of land license at public auction is not feasible or practical; provided, further, that upon any subsequent application by any other person for the same privilege for which a license has been issued without recourse to public auction, the board shall terminate such land license and offer the same at public auction, unless the board shall determine that the subsequent application can be accommodated without recourse to public auction."

SECTION 30. Chapter 103A, Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new section to read as follows:

"Sec. 103A-51.1. Land license, timber. Notwithstanding the provisions of section 103A-51, the board may issue land licenses for the harvesting, milling and sale of state-owned timber products without recourse to public auction. Said land license shall be for a period not exceeding 20 years."

SECTION 31. Chapter 103A, Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new section to read as follows:

"Sec. 103A-90.1. Lease to foreign governments. Notwithstanding any limitations to the contrary, the board may, with the prior ap-

proval of the governor, lease public lands for consulate purposes without recourse to public auction to foreign governments. The manner of disposition and the terms and conditions thereto shall be in accordance with the provisions of sections 103A-33, 103A-35 and 103A-36."

SECTION 32. Section 103A-55, Revised Laws of Hawaii 1955, is amended to read as follows:

"Section 103A-55. Minerals and water rights. Except as provided herein, the right to any mineral or surface or ground water shall not be included in any lease, agreement or sale, such right being reserved to the State; provided, that the board may make provisions in such lease, agreement or sale, for the payment of just compensation to the surface owner for improvements taken as a condition precedent to the exercise by the State of any reserved rights to enter, sever and remove minerals or to capture, divert or impound water.

Disposition of mineral rights shall be in accordance with the laws relating thereto enacted or hereafter enacted by the legislature.

Dispositions of water rights may be made by lease at public auction as provided in this chapter; subject, however, to disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the dates of such dispositions.

Any lease of water rights shall contain a covenant on the part of the lessee that said lessee shall provide from waters leased from the state under said lease or from any water sources privately owned by the lessee to any farmer or rancher engaged in irrigated pasture operations, crop farming, pen feeding operations, or raising of grain and forage crops, or for such public uses and purposes as may be determined by the board, at the same rental price paid under said lease, plus the proportionate actual costs, as determined by the board, to make such waters available, so much of such waters as are determined by the board to be surplus to the lessee's needs and for such minimum period as the board shall accordingly determine; provided, however, that in lieu of payment for such waters as the state may take for public uses and purposes the board may elect to reduce the rental price under said lease of water rights in proportion to the value of such waters and the proportionate actual costs of making such waters available. Subject to the applicable provisions of section 103A-37(c), the board may, at any time during the term of said lease of water rights, withdraw from such waters leased from the state and from such sources privately owned by the lessee so much water as it may deem necessary to (1) preserve human life and (2) preserve animal life, in that order of priority; and that from such waters leased from the state the board may, at any time during the term of said lease of water rights, also withdraw so much water as it may deem necessary to preserve crops; provided, however, that payment for such waters shall be made in the same manner as provided herein."

SECTION 33. Section 103A-63, Revised Laws of Hawaii 1955, is amended to read as follows:

“Sec. 103A-63. Restrictions; conditions. In addition to such other restrictions or conditions that may be established by the board to carry out the purpose of this chapter and of the provisions of the State Constitution, all sale, lease or lease with option to purchase; of a farm lot shall be subject to the following conditions, which shall be covenants running with the land:

(a) The lot shall be used for farm purposes only;

(b) The purchaser or lessee shall reside on the premises granted; provided that, with the consent of the board, he may live off the premises if his residence is within a reasonable distance therefrom;

(c) The purchaser or lessee shall derive the major portion of his total annual income from the production of the crops or products for which production the land is granted to the purchaser or lessee; provided, that this restriction shall not apply if the purchaser or lessee becomes enfeebled or is widowed;

(d) In the case of a lease, those provisions set forth in sections 103A-35, 103A-36 and 103A-37, unless otherwise specifically provided in this section; and

(e) In the case of a fee simple sale, the improvement required and the specific use or uses intended;

(f) For a period of five years after the issuance of a patent or lease, the purchaser or lessee shall not sell, sublet, assign, transfer or in other manner dispose or encumber the whole or any part of the farm lot to any person not qualified to take a farm lot except by way of mortgage, testamentary bequest or devise, intestate succession, or except to a purchaser at or after sale upon the foreclosure of a mortgage.

The violation of any of such restrictions or conditions shall be sufficient for the board, upon failure of the purchaser or lessee within a reasonable period of time to remedy the default after notice thereof as provided in section 103A-20 to take possession of the premises without demand or previous entry and with or without legal process and thereby determine the estate, subject to the provisions contained in section 103A-21.”

SECTION 34. Section 103A-64, Revised Laws of Hawaii 1955, is amended to read as follows:

“Sec. 103A-64. Applicants; qualifications of. A person shall be eligible to apply for a farm if he has the qualifications as follows:

(a) He has been a resident in the State at any time for at least three years;

(b) He is a bona fide farmer:

(1) Who has not less than two years' experience as a full-time farmer; or

(2) Who was an owner-operator of an established farm conducting a substantial farming operation and who for a substantial period of his life resided on a farm or depended on farm income for his livelihood; or

(3) Who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding his application obtained

the major portion of his income from farming operations; or

(4) Who has a college degree in agriculture; or

(5) Who by reason of ability, experience and training as a vocational trainee is likely to successfully operate a farm; or

(6) One who has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant Act as amended, or as may hereafter be amended, for the acquisition of a farm; or

(c) He meets such other qualifications as the board may prescribe pursuant to section 103A-6.

No person shall be entitled to apply for a farm:

(a) Who, or whose husband or wife, has previously taken or held land for farm or homesteading under any certificate, lease or agreement or under any homestead lease or patent based thereon; or

(b) Who, or whose husband and [or] wife, or both of them, owns in fee simple other land in the State, the combined area of which with the land in question exceeds eighty acres; provided, that:

(1) The ownership of a residence lot or tract, not exceeding three acres in area, shall not disqualify any person otherwise qualified from applying for and receiving any form of farm;

(2) Any person who would otherwise qualify to take a farm lot shall not be disqualified by reason of taking, holding or owning land for farm or homesteading or otherwise, if the land so taken, held or owned becomes unusable for the purpose of farming as defined in section 103A-61.

The terms 'farm' and 'farmer' as used herein also means ranch and rancher respectively for the purposes of this section."

SECTION 35. Section 103A-90, Revised Laws of Hawaii, 1955, is amended to read as follows:

"Sec. 103A-90. Disposition to governments, governmental agencies, and public utilities. Notwithstanding any limitations to the contrary, the board may, without public auction:

(a) Sell public lands at such price and on such other terms and conditions as the board may deem proper to governments, including the United States, city and county, counties, other governmental agencies authorized to hold lands in fee simple and public utilities;

(b) Lease to such governments, agencies and public utilities public lands for terms up to, but not in excess of, sixty-five years at such rental and on such other terms and conditions as the board may determine;

(c) Grant licenses and easements to such governments, agencies, and public utilities on such terms and conditions as the board may determine for road, pipeline, utility, communication cable and other rights-of-way;

(d) Exchange public lands with such governments and agencies;

(e) Execute quitclaim deeds to such governments and agencies, with or without consideration, releasing any claim to the property involved made upon disputed legal or equitable grounds, whenever the board in its discretion deems it beneficial to the State;

(f) Waive or modify building and other requirements and conditions contained in deeds, patents, sales agreements or leases held by such governments and agencies whenever such waiver or modification is beneficial to the State.

In any disposition to public utilities under this section:

(1) The sale price or lease rental shall be no less than the value determined in accordance with section 103A-17 (b).

(2) The board shall provide that in case the land ceases to be used at any future time for the use for which such disposition was made, the board shall have the right to repurchase the land at the original sale price or fair market value, whichever is lower, and to purchase improvements thereon at the depreciated value or fair market value, whichever is lower.

(3) Such disposition shall not be made to any public utility if such utility has suitable lands of its own.

(4) The disposition to public utilities shall be subject to disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both, in any regular or special session next following the date of such disposition.

(5) For the purposes of this section, the definition of "Public Utility" as established in section 104-1 is hereby incorporated herein by reference."

SECTION 36. Sections 99D-10 and 99D-11, Revised Laws of Hawaii 1955, are hereby repealed in their entirety.

SECTION 37. Section 103A-2, Revised Laws of Hawaii 1955, is amended to read as follows:

"Section 103A-2. Definition of public lands. 'Public lands' means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to such date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner, including submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter; except: (1) lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended, (2) lands set aside pursuant to law for the use of the United States, (3) lands set aside under this chapter or prior to the enactment of this chapter, (4) lands being used for roads and streets, (5) lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board and given the status of public lands in accordance with the provisions of the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws, (6) lands to which the University of Hawaii holds title, and (7) lands to which the Hawaii Housing Authority in its corporate capacity holds title."

SECTION 38. Chapter 103A of the Revised Laws of Hawaii 1955

is hereby amended by adding thereto a new section to be appropriately numbered and to read as follows:

"Section . Notwithstanding any limitations to the contrary, the board may lease, by direct negotiation and without recourse to public auction, lands within a state park or forest reserve and other lands set aside under executive orders, for recreation-residence use for a period not to exceed 20 years on such terms and conditions as may be prescribed by the board."

SECTION 39. Chapter 103A of the Revised Laws of Hawaii 1955 is hereby amended by adding thereto the following new section:

"Section 103A-56.1. A. Contract for development by direct negotiation. The board may contract with a private developer or developers by direct negotiation, as provided herein, without resort to public bidding, for the development, subdivision, and improvement of public lands for agricultural, single-family or multiple-family residential, industrial, commercial, business or hotel and resort uses, for subsequent disposition by the board. The provisions of this section shall apply only in the event funds are not immediately available for financing a development project authorized by the legislature. All payments under the contract, notwithstanding any laws to the contrary, shall be made after the disposition of such developed lands from the proceeds thereof.

"After a determination by the board to enter into such contract the board shall:

"a. Give notice, in accordance with the procedure set forth in section 103A-16(c), of its intention to contract by negotiation for the development and subdivision of public lands. Such notice shall include the terms and conditions for the proposed development and subdivision, and the use or uses for which the public lands will be disposed. Any private land developer or developers as defined herein who are interested in such contract may file an application with the board not later than forty-five days after the first publication of notice. The application shall include the financial statement and performance and experience records of the applicant; provided, that the board may also, in its discretion, require the applicant to submit answers, under oath, to questions contained in a standard form questionnaire prepared by the board, setting forth a complete statement of the experience of the applicant in performing the type of work required for the proposed development and subdivision.

"b. Establish reasonable criteria for the selection of the private developer or developers.

"c. Review all applications and questionnaires, if any, and determine the applicants who meet the criteria established and award the contract to the applicant whose proposal and qualifications it deems are in the best interest of the public.

"The board may include in the contract provisions for the construction of improvements for the use or uses authorized herein.

"Any disposition by the board after development and subdivision

shall be in accordance with the provisions of this chapter.

"All contracts negotiated pursuant to this section shall be subject to the following terms and conditions:

"a. The development and subdivision shall comply with appropriate county and city and county zoning and subdivision requirements.

"b. The developer or developers shall be required to give security for the performance thereof by a good and sufficient bond conditioned upon the full and faithful performance of the contract in accordance with the terms and intent thereof and also for the prompt payment to all others for all labor and materials furnished as provided in section 9-31 to section 9-35.

"c. Final payment on the contract shall be in accordance with section 9-46.

"d. Preliminary plans and final plans for the development and subdivision shall be submitted to the board for approval or revisions.

"e. The date of completion of the project shall be set by the board.

"f. Wages and hours of work of laborers shall be in accordance with the requirements of Chapter 9.

"g. The contract shall not be assignable without the prior approval of the board.

"h. Other terms and conditions deemed advisable by the board.

"B. Disposition to developer. The board may, with the prior approval of the governor and subject to disapproval by the legislature by two-thirds vote of either the Senate or the House of Representatives or by majority vote of both in any regular or special session next following the date of disposition, dispose of public lands in a development project authorized by the Legislature, at public auction or by direct negotiation, as provided herein, by sale, lease or lease with option to purchase, to a private developer or developers for development and subdivision of such public lands for industrial, single-family or multiple-family residential, commercial, business or hotel and resort uses."

"Prior to the disposition of public lands to a developer or developers by direct negotiation, the board shall:

"a. Give notice in accordance with the procedure set forth in section 103A-16 (c). Such notice shall include the terms and condition for the proposed disposition and the use or uses for which such lands shall be sold or leased. Any private land developer or developers who are interested in such lands shall file an application with the board not later than forty-five days after the first publication of notice. The application shall include the financial statement and performance and experience records of the applicant; provided, that the board may also, in its discretion, require the applicant to submit answers, under oath, to questions contained in a questionnaire prepared by the board;

"b. Establish reasonable criteria for the selection of the private land developer or developers;

"c. Determine the applicants who meet the criteria for selection set by the board, and notify all applicants of its determination. Any applicant may examine the basis of the determination, which shall be in writing, to ascertain whether or not the conditions and criteria established by the board were followed; provided, that, if any applicant does not notify the board of his objections, and the grounds therefor, in writing, within twenty days of the receipt of such notice, he shall be barred from proceeding to seek legal remedy for any alleged failure of the board to follow the conditions and criteria; and

"If only one applicant meets the criteria for selection as the developer, the board may then dispose of such public lands by negotiation. If two or more applicants meet the criteria for selection, the board shall select the applicant who submits the highest offer contained in a sealed bid deposited with the board.

"The terms of the disposition shall include the following:

"1. The development and subdivision shall comply with appropriate county and city and county zoning and subdivision requirements;

"2. The developer or developers shall file with the board a good and sufficient bond conditioned for the full and faithful performance of all of the terms, covenants and conditions of the disposition;

"3. Preliminary plans and final plans for the development shall be submitted to the board for approval;

"4. Date of completion of the project as set by the board;

"5. The board may require the developer or developers to construct improvements for the use or uses authorized herein;

"6. The developer or developers shall sell, lease or lease with option to purchase by way of transfer or assignment, such lands in accordance with the provisions of this chapter and upon such other terms and conditions established by the board; and

"7. Such other terms and conditions set by the board."

"C. The term 'developer' as used in this section shall mean a person, firm, corporation, partnership, association, trust or other legal entity, or a combination of any thereof, who or which has experience in the development and subdivision of land for industrial, hotel and resort, business, commercial, or agricultural uses and has the financial ability satisfactory to the board to develop and subdivide land."

SECTION 40. Section 103A-19 of the Revised Laws of Hawaii 1955 is hereby amended by adding thereto after subsection (f) the following new subsection:

"(g) For the payment to private land developer or developers who have contracted with the board for development of public lands under the provisions of section 103A-56.1."

SECTION 41. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, then the legislature hereby declares that the remainder of this Act and each and every other provision thereof shall not be affected thereby.

SECTION 42. This Act shall take effect upon its approval.
(Approved July 8, 1965.) **H.B. 747.**