

ACT 116

H.B. NO. 760

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

“§171-2 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 that 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 being used for roads and streets,
- (4) 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 of land and natural resources and given the status of public lands in accordance with the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws,
- (5) Lands to which the University of Hawaii holds title, and
- (6) Lands to which the Hawaii housing authority in its corporate capacity holds title."

SECTION 2. Section 171-3, Hawaii Revised Statutes, is amended to read as follows:

"§171-3 Department of land and natural resources. The department of land and natural resources shall be headed by an executive board to be known as the board of land and natural resources. The department shall manage, administer, and exercise control over public lands, the water resources, and minerals and all other interests therein and exercise such powers of disposition thereof as may be authorized by law. The department shall also manage and administer the state parks, historical sites, forests, forest reserves, fisheries, wildlife sanctuaries, game management areas, public hunting areas, natural area reserves, and other functions assigned to it by law."

SECTION 3. Section 171-8, Hawaii Revised Statutes, is amended to read as follows:

"§171-8 Land agents and other employees.

The board shall be represented in each land district by a district land agent. The board may employ other necessary employees.

The district land agent shall exercise the powers and duties delegated by the board and shall report to the designated representative of the board.

The appointment, removal, and compensation of district land agents and other employees shall be determined in accordance with chapters 76 and 77."

SECTION 4. Section 171-11, Hawaii Revised Statutes, is amended to read:

"§171-11 Public purposes, lands set aside by the governor; management. The governor may, with the prior approval of the board of land and natural resources, 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 the lands or portions thereof so set aside shall be made by the governor.

Any public lands set aside by the governor prior to the enactment of this chapter, or any public lands set aside by the governor of the territory of Hawaii, shall be subject to the provisions of this section.

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 subdivisions 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, easements, 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, as provided by this chapter, all such dispositions being subject to the prior approval of the board; provided that any nonrenewable dispositions granting rights for a period not in excess of fourteen days shall not require (1) the approval of the board or (2) public auction or public advertisement for sealed tenders. 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 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.

This section shall also apply where the purposes are the uses and purposes of the United States; provided that all revenues derived from the lands and improvements thereon shall be paid to the department of land and natural resources 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 or required for the public purpose stated, the order setting aside the lands shall be withdrawn and the lands shall be returned to the department. The governor may withdraw public lands and, with the prior approval of the board of land and natural resources, set aside the withdrawn lands to another department or agency of the State, the city and county, county or political subdivision of the State or to the United States for public use or purpose, provided that no structure on such lands shall be built, demolished or altered until after the legislative action or inaction as hereinbelow provided.

The power granted to the governor in this section to set aside or withdraw or withdraw and set aside 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 the setting aside or withdrawal, or withdrawal and setting aside.

Whenever portions of 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 subdivision of the State are not presently utilized or required for the public purpose stated, the board shall have the power, without withdrawing the order setting aside the lands, to dispose of any and all real property interest less than the fee in the portions of such lands 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, and shall be undertaken in compliance with all other applicable sections of this chapter."

SECTION 5. Section 171-26, Hawaii Revised Statutes, is amended to read:

"§171-26 Rights-of-way to the sea, game management areas, and public hunting areas. Prior to the disposition of any public lands, the board of land and natural resources shall lay out and establish over and across such lands a reasonable number of rights-of-way from established highways to the public beaches, game management areas, public hunting areas, and public forests and forest reserves in order that the right of the people to utilize the public beaches, game management areas, public hunting areas, and public forests and forest reserves 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 management areas or public hunting areas. 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 management areas or public hunting areas.

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 6. Section 171-35, Hawaii Revised Statutes, is amended to read:

"§171-35 Lease provisions; generally. Every lease issued by the board of land and natural resources shall contain:

- (1) The specific use or uses to which the land is to be employed;
- (2) The improvements required; provided, that a minimum reasonable time be allowed for the completion of the improvements;
- (3) Restrictions against alienation as set forth in section 171-36;
- (4) 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;
- (5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and
- (6) 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 7. Section 171-64, Hawaii Revised Statutes, is amended to read:

"§171-64 Covenants against discrimination. The board of land and natural resources 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

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policy which discriminates against anyone based upon race, creed, color, national origin, sex or a physical handicap. The board shall not dispose of any public land to any person who practices discrimination based upon race, creed, color, national origin, sex or a physical handicap. As used in this section "physical handicap" means a physical impairment which substantially limits one or more of a person's major life activities."

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored.*

SECTION 9. This Act shall take effect upon its approval.

(Approved June 8, 1981.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.