

ACT 104

S.B. NO. 1890

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided, 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 of its political subdivisions;
- (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 if:
 - (A) It contains the personal residence of the lessee;

- (B) In the case of commercial, industrial, hotel, resort, apartment, and other business uses, the lessee was required to put in substantial building improvements;
 - (C) The lessee becomes mentally or physically disabled;
 - (D) Extreme economic hardship is demonstrated to the satisfaction of the board; or
 - (E) It is to the corporate successor of the lessee;
- 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[, if necessary, revise the rent of the demised premises based upon the consideration paid by the assignee; and provided that the rent shall not be revised downward;] 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;
- (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;
 - (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 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 24, 1989.)