

BY AUTHORITY

ACT 164

AN ACT

RELATING TO THE OPENING AND IMPROVEMENT OF HIGHWAYS, AMENDING SECTIONS 1793, 1794, 1795, 1796, 1797, 1798, AND 1799 OF CHAPTER 112, OF THE REVISED LAWS OF HAWAII, 1915, AND REPEALING SECTIONS 1743 TO 1792, INCLUSIVE.

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

SECTION 1. Section 1793 of the Revised Laws of Hawaii, 1915, is hereby amended to read as follows:

"Section 1793. Method. Whenever in the opinion of the Board of Supervisors of the City and County of Honolulu it is desirable to establish, open, extend, widen or alter any street, alley or other highway in the District of Honolulu, or to grade, pave, curb, or macadamize or otherwise improve the whole or any part of any existing public street, alley or other highway in the District of Honolulu or otherwise to improve the same to an extent exceeding maintenance and repair thereof, such betterments or improvements shall be made and done under the provisions of Sections 1793 to 1813, inclusive, of this chapter; and the cost thereof, including the cost of acquiring any new land therefor, shall be assessed against the land benefited, either on a frontage basis or according to area of the land within an improvement district; and the City and County of Honolulu shall issue and sell bonds to provide the funds for such improvements, which bonds shall be secured by such assessments as a lien upon the lands assessed; and for such purposes, whenever the cost of the improvement is to be assessed on an area basis, the board of supervisors is hereby invested with power and is hereby authorized to create, define and establish improvement districts; all according to the provisions of Sections 1793 to 1813, inclusive, of this chapter.

Provided, that whenever any public land, or any land by law exempted from assessments of the character provided for in this Act, or exempted by law from payment of property taxes, forms part of any improvement district or fronts upon any street, alley, or other highway to be opened, improved, and would, if privately owned or not exempt from such assessments, be subject to assessment, the board shall nevertheless, without assessing such public or exempted land for any part of the cost of such improvements by general ordinance appropriate and pay toward such improvements out of general revenues the portion of the cost thereof which would otherwise be assessable against the same; and when any such proposed improvement is made where any part of the cost is to be borne by the city and county, the board shall have the same right of approval or protest as though the city and county were the private owner of the public or exempted land so involved.

And provided, further, that it shall be lawful for the City and County of Honolulu to assume and pay out of general revenue all or any part of the cost of acquiring any new land required for any such improvement, or of improvement of a main or general thoroughfare, in either case by appropriation therefor by general ordinance. A main or general thoroughfare within the meaning hereof shall be any street or highway as is subjected to more than ordinary traffic and travel by the general public or which serves as a generally necessary connecting thoroughfare between substantially different or naturally separated localities or sections of Honolulu. Whenever it is proposed in any improvement proceeding, whether initiated by the board of supervisors or by property owners, that any street to be improved shall be deemed and declared a main or general thoroughfare for the improvement of which a part of the cost is proposed to be borne by the city and county, such street or streets shall be so designated and described in the initial resolution or petition with a statement of the proportion of the cost of the improvement thereof which it is proposed shall be borne by the city and county."

SECTION 2. Section 1794 of said Revised Laws of Hawaii, 1915, is hereby amended to read as follows:

"Section 1794. Initial procedure. The board shall, by resolution requiring not more than one reading for its adoption, propose the making of any such improvement or improvements, and specify the general character and extent thereof, and whether or not any new land is proposed to be acquired, and whether any street to be improved is proposed to be classed as a main or general thoroughfare and, if so, what proportion of the cost of improving such main or general thoroughfare is proposed to be borne by the city and county, the materials proposed to be used (which may include materials of such character as will not admit of competition), and whether the cost of the same is to be provided by assessment per front foot against the land abutting upon such highway, or per square foot according to area of the land within an improvement district, the general boundaries of any improvement district proposed and the sub-districts or zones, if any, within such improvement district against which different proportions of the cost are intended to be charged, and any other proper matters or details intended to apply thereto, and direct the city and county engineer to prepare and furnish all necessary surveys, maps, plans, drawings, and other data, details and specifications for the proposed improvements as may be proper or necessary, together with detailed estimates of the probable cost thereof, and showing speci-

fically an estimate of the value of each parcel of new land to be acquired, if any, and the maximum share of each estimate, per front foot if the assessment is to be made on a frontage basis, or per square foot if the assessment is to be according to area within an improvement district, including the different proportions of cost to be assessed against the sub-districts or zones, if any, within such improvement district; all in such detail and form as will readily show the approximate share of the total cost that would be assessable against each parcel of land to be assessed, and the part or proportion, if any, proposed to be borne by the city and county as aforesaid.

When such data has been made and furnished and by like resolution, approved by the board, the board shall by advertisement for ten consecutive days, exclusive of Sundays and legal holidays, in some newspaper of general circulation printed and published, in Honolulu give notice to the owners, lessees and occupants of the land proposed to be assessed as well as of any new land proposed to be acquired, and to all persons interested generally, of the general character and extent of the improvements proposed, the part or proportion of cost, if any, proposed to be borne by the city and county as aforesaid, the materials proposed to be used, the proposed method of assessment, a particular description of the land to be acquired, if any, and of the frontage or improvement district to be assessed, the probable cost of such improvements, and the maximum share of each estimate of cost per front foot, if the assessment is to be made on a frontage basis, or per square foot, if the assessment is to be made according to the area of land within an improvement district, including the different proportions to be charged against the lands in the different sub-districts or zones, if any, within such improvement district; together also with notice that the map and general plans and other data so prepared by the engineer with respect to the proposed improvements may be seen and examined, by any person interested, at the office of the city and county engineer at any time during business hours prior to the date fixed for the hearing; and also fixing a date and place when a public hearing will be had respecting the proposed improvements and a full opportunity given to all persons interested to present suggestions or objections to the proposed improvements or any part or detail thereof, which date shall not be less than three weeks after the first publication of such notice."

SECTION 3. Section 1795 of said Revised Laws of Hawaii, 1915, is hereby amended to read as follows:

"Section 1795. Protest by owners. If the owners of fifty-five per cent. of the total frontage or area to be assessed for such improvements, shall at the hearing or prior thereto file with the supervisors a written protest duly acknowledged by such owners against the making of such improvement or against any part of the plan therefor, the same shall not be made contrary to such protest. If the protest is against the making of any improvement, the same shall not be made, and the proceedings shall not be renewed within six months thereafter unless under the provisions of Section 1797 of this chapter."

SECTION 4. Section 1796 of said Revised Laws of Hawaii, 1915, is hereby amended to read as follows:

"Section 1796. Determination by supervisors. After the hearing provided in Section 1794 of this chapter, and if sufficient protests have not been filed, the board shall proceed to determine whether or not the proposed improvements shall be made as proposed, or made with modifications, and in the latter event modifications or changes reducing the frontage or area to be assessed or lessening the unit cost per front foot or square foot may be made without again giving notice of a hearing as provided in Section 1794, provided, such modifications or changes shall not materially alter the general character or plan so advertised. If, after such initial or further advertisement and hearing when no changes are made which will require further advertisement or hearing, the board shall have determined to proceed with the improvements, they shall, by resolution requiring not more than one reading for its adoption, create, define and establish the extent of the frontage or the improvement district to be assessed, as the case may be, and define the kind, extent and general details of the proposed improvements, describe each parcel of land to be acquired, if any, declare the part or proportion of the cost of the improvement which is to be borne by the city and county as aforesaid, the method of assessment, and the kind or kinds of materials to be used, and by such resolution further direct the city and county engineer to prepare a corrected map of the highway or highways to be improved showing the abutting lands, or of the improvement district showing the highways therein to be improved, as the case may be, and showing the exact location of the improvements, together with final details, plans and specifications for the work; all in such form as will readily permit and encourage genuine competition between contractors in so far as the materials specified will permit of such competition; and the same, when by resolution similarly approved and adopted by the board, shall be used as the basis for the calling of bids and awarding of a contract or contracts for the work as hereinafter provided.

In case such improvements so determined upon shall require the acquisition of any new land therefor, the board of supervisors shall acquire the same before proceeding with the proposed improvement, either by deed, or other voluntary conveyance from the owners thereof at a price or cost not to exceed the estimate of the value thereof which has been advertised as aforesaid, or they may, at their option, and in the name of the City and County of Honolulu cause condemnation proceedings to be brought to acquire the same in like manner as by law

now or hereafter provided for like proceedings when brought by the superintendent of public works."

SECTION 5. Section 1797 of said Revised Laws of Hawaii, 1915, is hereby amended to read as follows:

"Section 1797. Petition by owners. If the owners of sixty per cent. of the frontage upon any street, alley or highway designated by them, or of sixty per cent. of the area of land designated by them as a proposed improvement district, shall file with the board of supervisors a petition duly acknowledged by such owners requesting the opening or improvement of any such street, alley or highway, or of the streets, alleys or highways in such proposed improvement district, together with the surveys, maps, plans and other preliminary data and estimates mentioned in Section 1794 in the case of a proceeding initiated by the board, the board shall thereupon proceed thereon in the same manner as though the plan for such improvements had been initiated on their own motion; and the cost of such preliminary surveys, maps and other data, if not in excess of the estimate therefor stated in such petition, shall be deemed part of the cost of the improvement. Provided, however, that upon such petition the board shall not have power to abandon such proceedings or make any change or modification of such plans or the details or specifications for the proposed improvements without the written and duly acknowledged consent of the owners of not less than sixty per cent. of the frontage or area of the land to be assessed; except that the board may decline to acquiesce in or may modify any part of such plan which contemplates the payment by the city and county of any part of the cost of acquiring new land or of any part of the cost of improving any main or general thoroughfare, and in such event, if the owners of sixty per cent. of the frontage or property to be assessed shall in writing acquiesce in any such change or modification, the board shall be bound to proceed with the plan as so modified."

SECTION 6. Section 1798 of said Revised Laws of Hawaii, 1915, is hereby amended to read as follows:

"Section 1798. Contract, bids, bond. All improvements made under the provisions of Sections 1793 to 1813, inclusive, of this chapter shall be constructed under contract let to the lowest responsible and reliable bidder therefor after public advertisement by the supervisors for not less than ten days in some newspaper of general circulation, published in said city and county; provided, however, that such advertisement shall not be required in cases where the only material specified in such contract or contracts, without advertisement for bids, for the work (including foundation construction) upon streets to be paved with materials which will not admit of competition, the supervisors may nevertheless either advertise for bids and let the work as an entire contract, or, in their discretion, advertise for bids and make one or more contracts separately for the work upon the streets to be paved with materials which will admit of competition, and make a separate contract or contracts, without advertisement for bids, for the work (including foundation construction) upon streets to be paved with materials which will not admit of competition. No bid shall be considered unless accompanied by a certified check, or its equivalent, payable in and in favor of the city and county, for not less than ten per cent. of the amount bid; which check, or equivalent, shall be forfeited to the city and county unless the successful bidder shall sign the contract and furnish an approved bond within ten days after the contract is awarded. No bid in excess of the estimated cost shall be accepted by the supervisors without the written and acknowledged approval of the owners of at least sixty per cent. of the frontage or area to be assessed as the case may be; and the supervisors shall have the right to reject any and all bids and in such case to readvertise for tenders if they deem it advisable to do so; provided, always, that if the owners of sixty per cent. of the frontage or area to be assessed shall in writing, duly acknowledged, in any case request a readvertisement for bids, or the acceptance of any bid or bids covering the work, such request shall in each instance be binding upon the supervisors. But no contract shall be made until the assessment hereinafter provided shall have been finally made, nor without a bond to the city and county for the faithful performance of such contract in an amount not less than the contract price, with at least two sufficient sureties each of whom shall be worth not less than the full amount of the bond over and above all property exempt from execution, and who shall, upon the written demand of the supervisors or of any owner of property subject to assessment, be required to justify thereon on an examination under oath before a judge of the first circuit court. If upon such examination any surety shall be held insufficient, a new bond with sufficient sureties shall be filed by the successful bidder within five days thereafter, or the contract shall not be awarded and the deposit shall be forfeited. Upon the contract being signed and a sufficient bond furnished as aforesaid, the deposit made with the bid shall be returned to the contractor. Any other method of letting contracts shall be illegal and void."

SECTION 7. Section 1799 of said Revised Laws of Hawaii, 1915, is hereby amended to read as follows:

"Section 1799. Notice after improvement authorized. Before the letting of any contract as aforesaid, the supervisors shall cause a corrected map to be prepared by the city and county engineer similar to that required under Section 1794, showing in detail the proportionate amount per front foot if the assessment is to be made on such basis, or per square foot if the assessment is to be made according to area proposed to be assessed against the property in the benefited district or in the several sub-districts or zones thereof, if any, and a list of all known owners, lessees and occupants of the land fronting

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