

House Bill No. 891

An act relating to the City of Daytona Beach, Volusia County; providing for the lease of certain submerged lands to the city by the state; providing for the duration of the lease; specifying the amount of the lease; providing for the purpose of the lease; providing that the lease is contingent upon the city's acquisition of the pier situated upon the leased lands; providing additional terms of the lease; prohibiting transfer of lease without legislative action; providing for severability; requiring written submission of acceptance of terms to the Department of Environmental Protection; providing an effective date.

WHEREAS, the City of Daytona Beach has undertaken a major downtown redevelopment effort designed to foster economic enterprise, to enhance tourism, and to restore certain historic city attributes, and

WHEREAS, the historic pier situated centrally within the redevelopment area is a key feature of the redevelopment endeavor and the lease of the submerged lands underlying the pier to the City of Daytona Beach is an essential component for this multifaceted project, and

WHEREAS, it is the intention of the City of Daytona Beach to acquire ownership of the pier and establish it as the center point of the redevelopment project, and

WHEREAS, the Legislature finds that it is in the public interest to provide for a lease of the lands underlying the historic pier to the City of Daytona Beach for the purposes stated in this act, NOW, THEREFORE,

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

Section 1. The lessor, the Board of Trustees of the Internal Improvement Trust Fund, is hereby directed to lease the following described property to the lessee, the City of Daytona Beach, Florida:

A parcel of sovereign submerged land in Volusia County, Florida, more particularly described as:

A portion of submerged land in the Atlantic Ocean adjacent to Block 2, Plan of Seabreeze Subdivision as recorded in Deed Book "O" Page 301, Public Records of Volusia County, Florida, and being more particularly described as follows. As a point of reference, commence at the northeast corner of Block 5, said plan of Seabreeze Subdivision, thence north 67 degrees 53 minutes 33 seconds east along the southerly original right of way line of Main Street and along its extension thereof, 488.65 feet more or less, to the mean high water line of the Atlantic Ocean Beach and to the point of beginning. Thence continue north 67 degrees 53 minutes 33 seconds east 1000.00 feet, thence south 22 degrees 06 minutes 27 seconds east 242.30 feet, thence south 67 degrees 53 minutes 33 seconds west, 979.07 feet, more or less to the aforementioned high water line, thence north 27 degrees 02 minutes 40 seconds west along the said mean high water line approximately 243.21 feet to the point of beginning.

Section 2. The term of this lease runs for a period of 35 years commencing on the date the City of Daytona Beach acquires ownership of the pier and associated upland parcel. Such acquisition must occur no later than 5 years after the effective date of this act. The lessee shall pay an initial annual lease fee of \$5,000 to the Board of Trustees of the Internal Improvement Trust Fund. The annual lease fee shall increase by \$5,000 at each successive 5-year interval during the lease term and shall be remitted to the Department of Environmental Protection as the agent for the lessor. The lease fee for any renewals of this lease, beyond the initial lease period, shall be determined pursuant to the terms of Chapter 18-21, F.A.C., in effect at the time of such renewal.

Section 3. The submerged lands described in this act are leased for the purpose of furthering the city's downtown redevelopment initiative, including the city's acquisition of the historic pier situated upon the leased lands and such uses may include nonwater-dependent activities. If the city is unable to acquire the historic pier or, once having purchased the pier, relinquishes ownership, this lease is void.

Section 4. This lease is specifically contingent upon the City of Daytona Beach acquiring ownership of the pier, and this lease shall not take effect unless and until such acquisition is secured.

Section 5. The lessee shall make no claim of title or interest to the lands described in section 1 by reason of the occupancy or use thereof, and all title and interest to the lands described in section 1 is vested in the lessor. The lessee may not make any claim, including any advertisement, that said lands may be purchased, sold, or resold.

Section 6. During the term of this lease, the lessee shall maintain a fee simple title interest in the riparian upland property and, if such interest is terminated, the lease may be terminated at the option of the lessor. Prior to sale or other transfer of the lessee's fee simple title interest in the upland property, the lessee shall inform any potential buyer or transferee of the lessee's upland property interest of the existence of this lease and all its terms and conditions and shall complete and execute any documents required by the lessor to effect an assignment of this lease, if authorized by further legislative action. Failure to do so shall not relieve the lessee from responsibility for full compliance with the terms and conditions of this lease which include, but are not limited to, payment of all fees or penalty assessments incurred prior to the effective date of this act.

Section 7. The lessee shall investigate all claims of every nature arising out of this lease at its expense and shall indemnify, defend and save, and hold harmless the State of Florida from all claims, actions, lawsuits, and demands arising out of this lease or the operation and activities associated with this lease.

Section 8. The lessee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this lease. The lessee shall

purchase and maintain an all-risk property insurance policy to cover repair or replacement costs, subject to a deductible, that may arise out of damage occurring to the pier due to perils insured under such policy. The lessee shall provide proof of this insurance in writing and shall submit proof of insurance to the Department of Environmental Protection along with each annual lease payment.

Section 9. The lessee is prohibited from mooring vessels or charging general admission fees for public access to any pier built or operated on the leased premises. The lessee shall not knowingly permit or suffer any nuisances or illegal operations of any kind on the leased premises. During the term of this lease and during any renewals, extensions, modifications, or assignments thereof, the lessee shall prohibit the operation or entry onto the leased premises of gambling cruise ships, or vessels that are used principally for the purpose of gambling, when these vessels are engaged in "cruises to nowhere." The term "cruises to nowhere" means the activity of ships that leave and return to the State of Florida without an intervening stop within another state or foreign country or waters within the jurisdiction of another state or foreign country, and any watercraft used to carry passengers to and from such gambling cruise ships.

Section 10. The lessee shall maintain the leased premises in good condition and keep the structures and equipment located thereon in a good state of repair in the interests of public health, safety, and welfare. No structure shall be built or operated in any manner that would cause harm to wildlife. All garbage, debris, and sewage shall be disposed of in an appropriate upland facility. The leased premises shall be subject to inspection by the Department of Environmental Protection at any reasonable time.

Section 11. The lessee shall prohibit the mooring of any "liveaboard" vessel within the leased premises. "Liveaboard" is defined as a vessel moored or docked at the facility and inhabited by a person or persons for any 5 consecutive days or a total of 10 days within a 30-day period. In the event liveaboards are authorized by further legislative action, in no event shall such liveaboard status exceed 6 months within any 12-month period, nor shall any such vessel constitute a legal or primary residence.

Section 12. The lessee, at its cost, shall remove any structures and equipment from the leased premises at the end of the lease term. Any costs incurred by the lessor in removal of any structures and equipment constructed or maintained on the leased premises shall be paid by the lessee and any unpaid costs and expenses shall constitute a lien upon the interest of the lessee in its riparian upland property enforceable in summary proceedings as provided by law. If the lessee does not remove said structures and equipment occupying and erected upon the leased premises after expiration or cancellation of this lease, such structures and equipment shall be deemed forfeited to the lessor, and the lessor may authorize removal and may sell such forfeited structures and equipment after 10 days' written notice by certified mail addressed to the lessee at the address on record as provided to the lessor by the lessee. However, such remedy shall be in addition to all other remedies available to the lessor under applicable laws, rules, and regulations, including the right to compel removal of all structures and the right to impose administrative fines.

Section 13. In the event that any part of any structure authorized under this act is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent riparian rights, the lessee agrees to either obtain written consent for the offending structure from the affected riparian owner or to remove the interference or encroachment within 60 days from the date of the adjudication. Failure to comply with this section shall constitute a material breach of this lease agreement and shall be grounds for immediate termination of this lease agreement.

Section 14. Prior to commencement of construction or the activities authorized in this act, the lessee shall obtain all necessary federal, state, and local permits. Nothing in this act shall serve as regulatory authorization for the proposed project or shall be construed as authorization to issue permits for the proposed project if the proposed project does not meet federal, state, or local permitting standards.

Section 15. On or in conjunction with the use of the leased premises, the lessee shall at all times comply with all federal, state, and local laws and all administrative rules promulgated thereunder which are not inconsistent with this act.

Section 16. The lease shall not be amended, modified, assigned, or otherwise transferred without further legislative action.

Section 17. The lease authorized by this act represents the entire and only agreement between the parties. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

Section 18. This lease shall not take effect until the lessee, the City of Daytona Beach, submits acceptance of the terms of this lease in writing to the Department of Environmental Protection, as staff to the Board of Trustees of the Internal Improvement Trust Fund.

Section 19. This act shall take effect upon becoming a law.

Approved by the Governor May 25, 2001.

Filed in Office Secretary of State May 25, 2001.