

ACT 175

S. B. NO. 176

A Bill for an Act Relating to Dedication of Land for Ranching or Agricultural Use.

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

SECTION 1. Section 246-12, Hawaii Revised Statutes, is amended to read:

“(a) A special land reserve is established to enable the owner of any parcel of land within an agricultural district, a rural district, a conservation district, or an urban district to dedicate his land for a specific ranching or other agricultural use and to have his land assessed at its value in such use; provided that if the land is located within an urban district, (1) a lessee of the land with a term of ten or more years remaining from the date of the petition shall also be deemed an owner of the land within these provisos; (2) the land dedicated must be used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like; (3) the land dedicated must have been substantially and continuously used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like for the five year period immediately preceding the dedication request;

provided further that land situated within an agricultural district may be dedicated for a period of twenty years and shall be taxed at fifty per cent of its assessed value in such use.

(b) If any owner desires to use his land for a specific ranching or other agricultural use and to have his land taxed at its assessed value in this use or fifty per cent of its assessed value as the case may be, he shall so petition the director and declare in his petition that his land can best be used for the purpose for which he requests permission to dedicate his land and that if his petition is approved he will use his land for this purpose.

Upon receipt of any such petition, the director shall request the department of agriculture to make a finding of fact as to whether the land in the petitioned area is reasonably well suited for the intended use. The finding of the department of agriculture shall include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of operating unit, and present use of surrounding similar lands and other criteria as may be appropriate.

The director shall also request the director of planning and economic development to make a finding of fact as to whether the intended use is in conflict with the overall development plan of the State.

If both findings are favorable to the owner, the director shall approve the petition and declare that the owner's land is dedicated land; provided, that for lands in urban districts, the director shall make further findings respecting the economic feasibility of the intended use of the land. If all three findings are favorable, the director shall approve the petition and declare the land to be dedicated. A change in the dedicated use may be made by petition as provided in this subsection.

(c) The approval by the director of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of his land to a use other than agriculture for a minimum period of ten years or twenty years as the case may be, automatically renewable indefinitely, subject to cancellation as follows:

(1) In the case of a ten-year dedication, the owner may during the ninth year and years thereafter, give notice of cancellation by filing with the director, a written notice of cancellation, on or before September 25, to be effective as of July 1 of the following tax year;

(2) In the case of a twenty-year dedication, the owner may during the nineteenth year and years thereafter give notice of cancellation as provided by this subsection;

(3) In the case of a change in major land use classification not as a result of a petition by any property owner or lessee such that the owner's land is placed within an urban district, the dedication may be cancelled within sixty days of the change by the owner.

Upon any conveyance or any change in ownership during the period of dedication, the land shall continue to be subject to the terms and conditions of the dedication unless a release has been issued by the director.

(d) Failure of the owner to observe the restrictions on the use of his land shall cancel the dedication and special tax assessment privilege retroactive to the date of the dedication, but in any event, shall not exceed the term of the

original dedication, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a ten per cent a year penalty from the respective dates that these payments would have been due. The additional taxes and penalties, due and owing as a result of a breach of the dedication, shall be a paramount lien upon the property pursuant to section 246-55. Failure to observe the restrictions on the use means failure for a period of twelve consecutive months to use the land in that manner requested in the petition or the overt act of changing the use for any period. Any other provisions to the contrary notwithstanding, when a portion of the dedicated land is subsequently applied to a use other than the use set forth in the original petition, only such portion as is withdrawn from the dedicated use and applied to a use other than ranching or other agricultural use shall be taxed as provided by this subsection.

(e) The director shall prescribe the form of the petition. The petition shall be filed with the director by March 1 of any calendar year and shall be approved or disapproved by June 15. If approved, the assessment based upon the use requested in the dedication shall be effective on July 1, next.

(f) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

(g) The term 'owner' as used in this section includes lessees of real property whose lease term extends at least ten years from the date of the petition in the case of a ten-year dedication or lessees of real property whose lease term extends at least twenty years from the date of the petition in the case of a twenty-year dedication."

SECTION 2. Subsection 246-10(a), Subsection 246-10(d)(2), Subsection 246-10(f), Hawaii Revised Statutes, are amended to read:

"Sec. 246-10 Valuation; consideration in fixing. (a) The director of taxation shall cause the fair market value of all taxable real property to be determined and annually assessed as provided by law; provided that the value of land classified and used for agriculture, whether such lands are dedicated pursuant to section 246-12 or not, shall, for real property tax purposes, be the value of such land for agricultural use without regard to any value that such land might have for other purposes or uses, or to neighboring land uses, as determined as provided in subsection (f)(2) of this section. In making such determination and assessment, the director shall separately value and assess, within each class established in accordance with subsection (d) of this section: (1) buildings, and (2) all other real property, exclusive of buildings.

(d) (1) The land in each county shall be classified, upon consideration of its highest and best use, into seven general classes collected in four categories as follows:

Category I

- (A) improved residential;
- (B) agricultural;
- (C) conservation;

Category II

- (D) unimproved residential;
- (E) hotel and apartment;

Category III

(F) commercial;

Category IV

(G) industrial.

- (2) In assigning land to one of the general classes the director of taxation shall give major consideration to the districting established by the land use commission pursuant to chapter 205, the districting established by a county in its general plan and zoning ordinance, use classifications established in the general plan of the State, and such other factors which influence highest and best use; provided that lands, as to which the highest and best use is single-family and two-family residential, shall be classified as 'improved residential' as set forth below.
- (f) (1) In determining the value of land, other than land classified and used for agriculture, consideration shall be given to selling prices and income (including, where available, such data relating to the property being assessed and similar data for comparable properties), productivity, and nature of use (actual and potential), the advantage or disadvantage of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements and appurtenances, zoning, dedication of lands as provided for in section 246-12, and further to the opinions of persons who may be considered to have special knowledge of land values, and all others influences, whether similar to those listed or not, which fairly and reasonably bear upon the question of value.
- (2) In determining the value of lands which are classified and used for agriculture, whether such lands are dedicated pursuant to section 246-12 or not, consideration shall be given to rent, productivity, nature of actual agricultural use, the advantage or disadvantage of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements and appurtenances, and to the opinions of persons who may be considered to have special knowledge of land values.
- (3) A deferred or roll back tax shall be imposed on the owner of agricultural lands assessed according to its agricultural use as provided in subsection (a) of this section in the event of a change in land use classification by the authorized State agency to urban or rural districts or upon the subdivision of the land into parcels of five acres or less, provided that the tax shall not apply if the owner dedicates his land as provided in section 246-12 within one year from the date of the change in land use classification and fulfills all of the requirements of the dedication. The deferred tax shall be due and payable retroactive to the date the assessment was made pursuant to subsection (a) of this section but for not more than ten years. Any other provisions to the contrary notwithstanding, the deferred or roll back tax shall apply only if a change in land use classification has been

made as a result of a petition by any property owner or lessee.

The deferred or roll back tax shall be based on the difference in assessed value between the highest and best use and the agricultural use of the land, at the tax rate applicable for the respective years. The deferred tax shall be due and payable within sixty days of such conversion, subject to a ten per cent per annum penalty, provided that if the conversion occurs within five years of the date of enactment of this law, twice the amount of taxes and penalties as provided herein shall become due and owing. Any tax due and owing shall attach to the land as a paramount lien in favor of the State of Hawaii pursuant to section 246-55.

- (4) Where lands located within agricultural districts are put to agricultural uses, that portion of such lands not usable or suitable for any agricultural use, whether dedicated pursuant to section 246-12 or not, the tax upon such unusable or unsuitable land shall be deferred and shall be payable upon conversion as provided under this section."

SECTION 3. Section 246-12, Hawaii Revised Statutes, as amended, is hereby further amended by adding a new subsection to be appropriately designated and to read as follows:

"A special land reserve is established to enable the owner of any parcel of land within an urban district to dedicate his land for a specific livestock use such as feed lots, calf-raising and like operations in dairy, beef, swine, poultry and aquaculture, but excluding grazing or pasturing, and to have his land assessed at its value in such use; provided that (1) a lessee of the land with a term of ten or more years remaining from the date of the petition shall also be deemed an owner of the land within these provisos; (2) the land dedicated must be used for livestock uses such as feed lots, calf-raising, and like operations in dairy, beef, swine, poultry and aquaculture but excluding grazing or pasturing; (3) the land dedicated must have been substantially and continuously used in the livestock uses enumerated in (2) hereinabove; (4) and such livestock use must be compatible with the surrounding uses."

SECTION 4. If any section, sentence, clause, or phrase of this Act, or its application to any person or circumstances, is for any reason held to be unconstitutional or invalid, the remaining portion of this Act, or the application of this Act to other persons or circumstances shall not be affected. The legislature declares that it would have passed this Act and each section, sentence, clause, or phrase thereof irrespective of the fact that any one or more other sections, sentences, clauses, or phrases is declared unconstitutional or invalid.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 6. This Act, upon its approval, shall apply to the tax year beginning July 1, 1973, and subsequent tax years.

(Approved May 24, 1973.)

*Edited accordingly.