

ACT 22

S.B. NO. 2756

A Bill for an Act Relating to Agricultural Parks.

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

SECTION 1. Section 166-5, Hawaii Revised Statutes, is amended to read as follows:

“**[[§166-5]] Joint ventures.** Any agricultural park developed by the State in partnership with a federal agency, a county, or a private party shall be subject to a partnership agreement executed by the chairperson of the board of agriculture, which agreement shall provide, at a minimum:

- (1) A determination by the board that it is in the public interest to enter into the partnership agreement;
- (2) Long-term assurance that the land will be utilized for agricultural or aquacultural purposes;
- (3) State approval of the agricultural park development plans and specifications;
- (4) State review of selection and management of lessees;
- (5) Conditions to ensure a public benefit from any state funds expended for the project.”

SECTION 2. Section 166-6, Hawaii Revised Statutes, is amended to read as follows:

“**[[§166-6]] Disposition.** Any provision of this chapter to the contrary notwithstanding, the board may directly dispose of public lands set aside and designated for use as agricultural parks, by negotiation, drawing of lot, or public auction; provided that a reasonable portion of such disposition may be to farmers who qualify under the new farmer program pursuant to section 155-1(3). All such dispositions shall be by lease only and shall be subject to the requirements set forth in rules adopted by the board in conformance to section 166-9, and subject also to the following limitations:

- (1) The property shall be disposed of for agricultural or aquacultural purposes only;
- (2) The lessee shall derive the major portion of the lessee's total annual income from the lessee's activities on the premises; provided that this restriction shall not apply if failure to meet the restriction results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production of crops or products for which the disposition was granted;
- (3) The lessee shall comply with all federal and state laws regarding environmental quality control;
- (4) The board shall determine the specific uses for which the disposition is intended; parcel the land into minimum size economic units sufficient for the intended uses; make, or require the lessee to make, such improvements as are required to achieve the intended uses; set the upset price or lease rent based upon fair market value for the intended use of a lot; set the term of the lease, which shall be not less than fifteen years nor more than fifty-five years, including any extension granted for mortgage lending or guarantee purposes; and establish such other terms and conditions as it may deem necessary, including[,] but not limited to[,] restrictions against alienation and provisions for withdrawal by the board;

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- (5) 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[.]; and
- (6) Any transferee, assignee, or sublessee of an agricultural park lease shall first qualify as an applicant under this chapter.

The violation of any provision contained [herein] in this section shall be sufficient cause for the board, after due notice of breach or default as provided in rules adopted by the board in conformance [to] with section 166-9, to cancel the lease and take possession of the land."

SECTION 3. Section 166-7, Hawaii Revised Statutes, is amended to read as follows:

"[§166-7] Applicants. A person, including an agricultural cooperative organized under chapter 421 at least seventy-five per cent of the members of which qualify individually, shall be eligible to apply for an agricultural park lease if that person meets the qualifications for bona fide farmer as set forth in section 171-68(a) and (c), or for a new farmer who meets the qualifications of the new farmer program as set forth in section 155-1(3), or for a qualified aquaculturalist as set forth in section 219-2, and as further provided in rules adopted by the board in conformance [to] with section 166-9."

SECTION 4. Section 166-8, Hawaii Revised Statutes, is amended to read as follows:

"[§166-8] Preference right. [A displaced farmer] Any person who is otherwise qualified to take [a farm] an agricultural park lot, who is a veteran with an honorable discharge, or who qualifies as a displaced farmer, or [any farmer whose farm is] who operates a farm located in a zoning district where such use is a nonconforming use, or [any farmer] who qualifies under the new farmer program pursuant to section 155-1(3), shall be given preference in obtaining an agricultural park lot."

SECTION 5. Section 166-9, Hawaii Revised Statutes, is amended to read as follows:

"[§166-9] Rules. The board shall adopt rules in accordance with chapter 91 in order to effectuate the purposes of this chapter. Such rules shall provide, without limitation, for definitions; planning generally and for intensive agricultural uses; general eligibility requirements; qualifications of applicants; preference rights; disposition of leases; lease provisions; lease restrictions generally and for intensive agricultural uses; and notice of breach or default. Rules adopted by the board for the [purpose] purposes of this chapter shall be consistent with sections 155-1, 155-10, 171-11, 171-20, 171-33, 171-34, 171-35, 171-36, 171-37, 171-65, 171-66, 171-67, 171-68, and 171-69."

SECTION 6. Section 171-11, Hawaii Revised Statutes, is amended to read as follows:

"[§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[.]; and provided further that disposition of lands set aside for use as agricultural parks pursuant to chapter 166 shall not be subject to the prior approval of the board. 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, with¹ 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 the 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."

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SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved April 25, 1988.)

Note

1. Prior to amendment, "the" appeared here.