

ACT 52

H.B. NO. 2879

A Bill for an Act Relating to the Administration of the Agricultural Park Program.

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

SECTION 1. Section 166-4, Hawaii Revised Statutes, is amended to read as follows:

“§166-4 Park development. Except as herein provided, the department may develop, on behalf of the State or in partnership with a federal agency, a county, or a private party, agricultural parks which, at the option of the board, shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of buildings thereon; provided that:

- (1) The board finds the agricultural park is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (2) The development of the proposed agricultural park does not contravene any safety standards or tariffs approved by the public utilities commission for public utilities;
- (3) The legislative body of the county in which the agricultural park is to be situated shall have approved the agricultural park.
 - (A) The legislative body shall approve or disapprove the agricultural park within forty-five days after the department has submitted the preliminary plans and specifications for the agricultural park to the legislative body. If after the forty-fifth day an agricultural park is not disapproved, it shall be deemed approved by the legislative body.
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees, on account of actions taken by them in reviewing, approving, or disapproving the plans and specifications.
 - (C) The final plans and specifications for the agricultural park shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the planning, zoning, building, construction, and subdivision standards for that agricultural park. For purposes of sections 501-85 and 502-17, the chairperson of the board of agriculture or the responsible county official may certify maps and plans of lands connected with the agricultural park as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and such maps and plans shall be accepted for registration or recordation by the land court and registrar; and
- (4) The State shall assume the responsibility of maintaining all roads within the agricultural park[, using the proceeds of the agricultural park special fund established under section 166-10,] if the roads are developed exempt from applicable county ordinances, charter provisions, and rules regarding roads.”

SECTION 2. 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] approved by 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 3. 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 and related facilities 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]. The dispositions [shall] **may** be by lease [only] and shall be subject to the requirements set forth in rules adopted by the board in [conformance to] **conformity with** 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;
- (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. For the purpose of this paragraph, any transfer, assignment, sale, or other disposition of any interest, excluding a security interest, of any legal entity which holds an agricultural park lease shall be treated as a transfer of the agricultural park lease and shall be subject to the approval of the board of agriculture upon such reasonable terms and conditions, not inconsistent with this chapter or rules of the board, which the board may deem necessary. No such transfer shall be approved by the board if the disposition of the stock, or assets or other interest of the legal entity would result in the failure of the entity to qualify for an agricultural park lease.

The violation of any provision contained 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 with section 166-9, to cancel the lease and take possession of the land.

Further, the board of agriculture may issue easements, permits, and rights of entry covering agricultural park lands for use 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 in chapter 171.”

SECTION 4. Section 166-7, Hawaii Revised Statutes, is amended to read as follows:

“§166-7 Applicants. A person, including a partnership, corporation, or association or an agricultural cooperative organized under chapter 421 at least seventy-five per cent of the partners, stockholders, or members of which qualify individually, [shall be eligible to] may apply for an agricultural park lease if [that] the 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], partners, stockholders, or members are eligible and qualified according to criteria set forth in rules adopted by the board in conformance with section 166-9.”

SECTION 5. Section 166-8, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 6. 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 purposes of this chapter shall be consistent with sections [155-1, 155-10,] 171-11[,], and 171-20[, 171-33, 171-34, 171-35, 171-36, 171-37, 171-65, 171-66, 171-67, 171-68, and 171-69].”

SECTION 7. Section 166-10, Hawaii Revised Statutes, is amended to read as follows:

“[§166-10] Agricultural park special fund. (a) There is created in the state treasury a special fund to be designated as the agricultural park special fund. The proceeds in the fund shall be used for the following purposes:

- (1) Payment of agricultural park lease rents of privately owned lands under lease to the State pursuant to sections 171-112 and 166-3;
- (2) Establishing, operating, maintaining, and improving infrastructure improvements in agricultural parks designated by the department pursuant to section 166-3; and
- (3) Any other purposes deemed necessary by the department for the purpose of maintaining and operating those agricultural parks and

related facilities designated by the department pursuant to section 166-3.

For the purpose of paragraph (2), infrastructure improvements may include, but shall not be limited to: irrigation water system projects, wind power or hydro power and pumping systems, waste disposal systems, domestic water systems, roads, street lights, land and roads drainage, and bridges.

(b) Moneys appropriated for the purpose of the fund; any other provision of the law to the contrary notwithstanding, all moneys received or collected from an agricultural park project designated pursuant to section 166-3, including residential and agricultural lot lease rents; and all money collected or received by the department for the use and maintenance of [a] domestic and irrigation water [system] systems within an agricultural park and other [system] systems enumerated in subsection (a) shall be deposited into the agricultural park special fund. All interest earned or accrued on moneys deposited in the fund shall become a part of the fund. Moneys in the fund shall be expended upon warrants drawn by the comptroller.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved May 2, 1990.)