

ACT 211

H.B. NO. 2018

A Bill for an Act Relating to Agricultural Leases.

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

SECTION 1. As state agricultural leases near expiration, it becomes increasingly difficult for the lessees to prepare business plans due to the uncertainty of whether they will be able to successfully rebid at auction. This predicament may discourage lessees from making improvements to the leased premises or investments in the business, restrict a lessee's ability to finance improvements, reduce operating efficiencies, and deny the State of a fully productive agricultural operation.

While some lessees may extend their leases to the extent necessary to qualify for a mortgage or loan pursuant to section 171-36(b), Hawaii Revised Statutes, others may elect not to do so.

The legislature finds that these agricultural lessees should be provided an opportunity to determine at an earlier date prior to lease expiration whether they will

be able to retain the property for a longer term. The establishment of an early re-auction process would achieve this objective.

The legislature further finds that any re-auction process must also conform to the fundamental principles of the public land laws which prescribe making public lands available to the highest bidder at auction through a fair and open process.

The purpose of this Act is to authorize the department of land and natural resources to mutually cancel agricultural leases nearing expiration and to re-lease the lands by public auction.

SECTION 2. (a) Any qualified lessee of an agricultural lease may apply to the department of land and natural resources to re-auction the lease; provided that the lease has run at least thirty years and has less than five years remaining on the lease term. Upon receipt of the application and the written consent of any person or entity with an interest in, or subordinate to, the lease, the department may re-auction the agricultural lease; provided that any re-auction shall be in accordance with sections 171-14, 171-14.5, 171-16, and 171-17, Hawaii Revised Statutes; provided further that the board of land and natural resources:

- (1) May reject any application for re-auction upon a determination that the lands under lease can be used for a public purpose or for a higher and better or otherwise more appropriate use;
- (2) May establish qualification criteria and requirements for qualified lessees in addition to those contained in this section; and
- (3) Shall require the qualified lessee to sign an agreement prior to the issuance of any re-auction notice that includes provisions specifying that:
 - (a) The existing lease shall be canceled at the conclusion of the re-auction; and
 - (b) The lessee shall indemnify the State from any and all claims, lawsuits, or damages resulting from the early termination of the existing lease.

(b) For purposes of this section, “qualified lessee” means a lessee who is not in default of the terms and conditions of the existing lease and who has fully utilized the premises for the intended agricultural use under the existing lease.

SECTION 3. This Act shall take effect upon its approval and shall be repealed on July 1, 2007.

(Approved June 28, 2002.)