

JAN 26 2011

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 171, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§171-A Exceptional uses. (a) The board shall establish
5 rules pursuant to chapter 91 for designating as exceptional use
6 certain uses of public lands that are classified pursuant to
7 section 171-10 as intensive agricultural use, special livestock
8 use, pasture use, and watershed use.

9 (b) Exceptional use of public land shall include
10 activities or enterprises begun no later than December 31, 2009,
11 on lands under a lease for an area of ten or fewer acres, and
12 involving:

13 (1) The groundbreaking or innovative application of
14 agricultural or horticultural propagation techniques
15 or processes;

16 (2) The cultural protection of historical or important
17 gardens;

18 (3) Agricultural or horticultural education; or



1 (4) Experimental or exploratory applications of
2 agricultural or horticultural techniques.

3 §171-B Special lease provisions; exceptional uses. In
4 addition to all other lease requirements of this chapter, leases
5 for uses designated as exceptional use by the board pursuant to
6 section 171-A shall include the following provisions:

7 (1) Right of first refusal on the lease issued subsequent
8 to the termination of the present lease; and

9 (2) Reasonable rent which takes into consideration the
10 nature of the exceptional use and the special
11 circumstances, uncertainty of return on investment,
12 and expenditures inherent in the exceptional use;
13 provided that rent shall not be based on gross
14 receipts."

15 SECTION 2. Chapter 205, Hawaii Revised Statutes, is
16 amended by adding a new section to part III to be appropriately
17 designated and to read as follows:

18 "§205- Exceptional use; permits; priority. (a) Any
19 agency subject to this chapter or title 13 that issues permits
20 shall establish and implement a procedure for the priority
21 processing of permit applications and renewals, at no additional
22 cost to the applicant, for exceptional uses; provided that the



1 majority of the lands held, owned, or used by the applicant
2 shall be land designated as important agricultural lands
3 pursuant to this part, excluding lands held, owned, or used by
4 the applicant in a conservation district.

5 Any priority permit processing procedure established
6 pursuant to this section shall not provide or imply that any
7 permit application filed under the priority processing procedure
8 shall be automatically approved.

9 (b) As used in this section, "exceptional use" means
10 activities or enterprises begun no later than December 31, 2009,
11 on lands under a lease for an area of ten or fewer acres, and
12 involving:

13 (1) The groundbreaking or innovative application of
14 agricultural or horticultural propagation techniques
15 or processes;

16 (2) The cultural protection of historical or important
17 gardens;

18 (3) Agricultural or horticultural education; or

19 (4) Experimental or exploratory applications of
20 agricultural or horticultural techniques."



1 SECTION 3. Section 166, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Exceptional use" means activities or enterprises begun no
5 later than December 31, 2009, on lands under a lease for an area
6 of ten or fewer acres, and involving:

7 (1) The groundbreaking or innovative application of
8 agricultural or horticultural propagation techniques
9 or processes;

10 (2) The cultural protection of historical or important
11 gardens;

12 (3) Agricultural or horticultural education; or

13 (4) Experimental or exploratory applications of
14 agricultural or horticultural techniques."

15 SECTION 4. Section 166E, Hawaii Revised Statutes, is
16 amended by adding a new definition to be appropriately inserted
17 and to read as follows:

18 "Exceptional use" means activities or enterprises begun no
19 later than December 31, 2009, on lands under a lease for an area
20 of ten or fewer acres, and involving:



- 1 (1) The groundbreaking or innovative application of
- 2 agricultural or horticultural propagation techniques
- 3 or processes;
- 4 (2) The cultural protection of historical or important
- 5 gardens;
- 6 (3) Agricultural or horticultural education; or
- 7 (4) Experimental or exploratory applications of
- 8 agricultural or horticultural techniques."

9 SECTION 5. Section 171, Hawaii Revised Statutes, is
10 amended by adding a new definition to be appropriately inserted
11 and to read as follows:

12 "Exceptional use" means activities or enterprises begun no
13 later than December 31, 2009, on lands under a lease for an area
14 of ten or fewer acres, and involving:

- 15 (1) The groundbreaking or innovative application of
- 16 agricultural or horticultural propagation techniques
- 17 or processes;
- 18 (2) The cultural protection of historical or important
- 19 gardens;
- 20 (3) Agricultural or horticultural education; or
- 21 (4) Experimental or exploratory applications of
- 22 agricultural or horticultural techniques."



1 SECTION 6. Section 183C, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Exceptional use" means activities or enterprises begun no
5 later than December 31, 2009, on lands under a lease for an area
6 of ten or fewer acres, and involving:

- 7 (1) The groundbreaking or innovative application of
8 agricultural or horticultural propagation techniques
9 or processes;
10 (2) The cultural protection of historical or important
11 gardens;
12 (3) Agricultural or horticultural education; or
13 (4) Experimental or exploratory applications of
14 agricultural or horticultural techniques."

15 SECTION 7. Section 166-9, Hawaii Revised Statutes, is
16 amended to read as follows:

17 **"§166-9 Rules.** The board shall adopt rules in accordance
18 with chapter 91 in order to effectuate the purposes of this
19 chapter. [~~Such rules~~] Rules adopted pursuant to this section
20 shall provide, without limitation, for definitions; planning
21 generally and for intensive agricultural uses; general
22 eligibility requirements; qualifications of applicants;



1 designation of certain uses as exceptional use; preference
2 rights; disposition of leases; lease provisions[+], including
3 provisions for exceptional use; lease restrictions generally
4 [and], for intensive agricultural uses[+], and for exceptional
5 use; and notice of breach or default. Rules adopted by the
6 board for the purposes of this chapter shall be consistent with
7 sections 171-11 and 171-20."

8 SECTION 8. Section 166-11, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[+]§166-11[+] Lease negotiation. (a) The department of
11 agriculture may negotiate and enter into leases with any person
12 who:

- 13 (1) As of July 1, 1996, holds a revocable permit for
14 agricultural purposes; or
- 15 (2) Has formerly held an agricultural lease which expired
16 within the last ten years preceding July 1, 1996, and
17 has continued to occupy the state land; and
- 18 (3) Does not own agriculturally-zoned land of twenty-five
19 acres or more in the State, individually or jointly
20 with a spouse, or whose spouse does not own twenty-
21 five acres or more of agriculturally-zoned land in the
22 State.



1 (b) The land eligible for lease negotiations under this
2 section are limited to those lands:

- 3 (1) Zoned and used for agricultural purposes;
4 (2) Set aside by governor's executive order to the
5 department of agriculture for agricultural uses only;
6 and
7 (3) Not needed by any state or county agency for any other
8 public purpose.

9 (c) In negotiating and executing a lease as authorized,
10 the board of agriculture shall:

- 11 (1) Require the appraisal of the parcel to determine the
12 fair market value;
13 (2) Require the payment of annual lease rent based on the
14 fair market value established by appraisal;
15 (3) Require the payment of a premium, computed at twenty-
16 five per cent of the annual lease rent, with the
17 premium to be added to the annual lease rent for each
18 year of the lease equal to the number of years the
19 lessee has occupied the land, except that the premium
20 period shall not exceed four years; and



1 (4) Recover from the lessee the costs of expenditures
2 required by the department to convert the parcel into
3 leasehold.

4 Within six months from July 1, 1996, the department shall
5 notify in writing the permittees of lands eligible for lease
6 negotiations under this section and shall inform the permittees
7 of the terms, conditions, and restrictions provided by this
8 section. Any permittee may apply for a lease; provided that the
9 application shall be submitted to the department in writing
10 within thirty days from the date of receipt of notification;
11 provided further that the department may require documentary
12 proof from any applicant to determine that the applicant meets
13 eligibility and qualification requirements for a lease as
14 specified by this section.

15 (d) In addition to all other lease requirements of this
16 chapter, leases for uses designated as exceptional use by the
17 board shall include the following provisions:

- 18 (1) Right of first refusal on the lease issued subsequent
19 to the termination of the present lease; and
20 (2) Reasonable rent which takes into consideration the
21 nature of the exceptional use and the special
22 circumstances, uncertainty of return on investment,



1 and expenditures inherent in the exceptional use;
2 provided that rent shall not be based on gross
3 receipts."

4 SECTION 9. Section 166E-11, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~§~~166E-11~~§~~ Lease negotiation. (a) The department
7 may negotiate and enter into leases with any person who:

- 8 (1) Holds a revocable permit for agricultural purposes;
9 (2) Has formerly held an agricultural lease or a holdover
10 lease of public land that expired within the last ten
11 years and has continued to occupy the land; or
12 (3) Is determined by the department to have a beneficial
13 impact on agriculture.

14 (b) Lands eligible for lease negotiations under this
15 section are limited to lands that are:

- 16 (1) Zoned and used for agricultural purposes;
17 (2) Set aside for agricultural uses only, by the governor
18 through an executive order to the department; and
19 (3) Not needed by any state or county agency for any other
20 public purpose.

21 (c) In negotiating and executing a lease as authorized,
22 the board shall:



- 1 (1) Require the appraisal of the parcel using standards of
2 national appraiser organizations to determine the
3 rental, including percentage rent;
- 4 (2) Require the payment of a premium, computed at twenty-
5 five per cent of the annual lease rent, with the
6 premium to be added to the annual lease rent for each
7 year of the lease equal to the number of years the
8 lessee has occupied the land, except that the premium
9 period shall not exceed four years; and
- 10 (3) Recover from the lessee the costs of expenditures
11 required by the department to convert the parcel into
12 leasehold.

13 The department shall notify in writing those eligible for
14 lease negotiations under this section and shall inform the
15 applicants of the terms, conditions, and restrictions provided
16 by this section. Any eligible person may apply for a lease by
17 submitting a written application to the department within thirty
18 days from the date of receipt of notification; provided that the
19 department may require documentary proof from any applicant to
20 determine that the applicant meets eligibility and qualification
21 requirements for a lease.



1 (d) In addition to all other lease requirements of this
2 chapter, leases for uses designated as exceptional use by the
3 board shall include the following provisions:

- 4 (1) Right of first refusal on the lease issued subsequent
5 to the termination of the present lease; and
6 (2) Reasonable rent which takes into consideration the
7 nature of the exceptional use and the special
8 circumstances, uncertainty of return on investment,
9 and expenditures inherent in the exceptional use;
10 provided that rent shall not be based on gross
11 receipts."

12 SECTION 10. Section 183C-3, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[~~§~~183C-3~~§~~] **Powers and duties of the board and**
15 **department.** The board and department shall:

- 16 (1) Maintain an accurate inventory of lands classified
17 within the state conservation district by the state
18 land use commission, pursuant to chapter 205;
19 (2) Identify and appropriately zone those lands classified
20 within the conservation district;
21 (3) Adopt rules, in compliance with chapter 91 which shall
22 have the force and effect of law;



1 (4) Set, charge, and collect reasonable fees in an amount
 2 sufficient to defray the cost of processing
 3 applications for zoning, use, and subdivision of
 4 conservation lands;

5 (5) Establish categories of uses or activities on
 6 conservation lands, including allowable uses or
 7 activities for which no permit shall be required[+],
 8 and exceptional uses as defined by this chapter;

9 (6) Establish restrictions, requirements, and conditions
 10 consistent with the standards set forth in this
 11 chapter on the use of conservation lands; and

12 (7) Establish and enforce land use regulations on
 13 conservation district lands including the collection
 14 of fines for violations of land use and terms and
 15 conditions of permits issued by the department."

16 SECTION 11. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 12. This Act shall take effect on July 1, 2011.

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S.B. NO. 1158

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Report Title:

Agriculture; Exceptional Use

Description:

Creates the designation of exceptional use for certain agricultural activities; provides for special lease provisions for exceptional uses on public lands and in agricultural parks; provides priority consideration for applications for exceptional use by the land use commission and other agencies.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

