

JAN 17 2014

A BILL FOR AN ACT

RELATING TO THE DISPOSITION OF LANDS MANAGED BY THE STATE
DEPARTMENT OF AGRICULTURE.

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

1 SECTION 1. Section 166-6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Any provision of this chapter to the contrary
4 notwithstanding, the board may by negotiation, drawing of lot,
5 or public auction, directly dispose of public lands and related
6 facilities set aside and designated for use as agricultural
7 parks, and any other lands and facilities under the jurisdiction
8 of the department pursuant to section 166-3 and notwithstanding
9 chapter 171. Except as provided by subsection (c), dispositions
10 may be by lease and shall be subject to the requirements set
11 forth in rules adopted by the board in conformity with section
12 166-9, and subject also to the following limitations:

13 (1) The property shall be disposed of for agricultural or
14 aquacultural purposes only;

15 (2) The lessee shall derive the major portion of the
16 lessee's total annual income from the lessee's
17 activities on the premises; provided that this



1 restriction shall not apply if failure to meet the
2 restriction results from mental or physical disability
3 or the loss of a spouse, or if the premises are fully
4 utilized in the production of crops or products for
5 which the disposition was granted;

6 (3) The lessee shall comply with all federal and state
7 laws regarding environmental quality control;

8 (4) The board shall determine the specific uses for which
9 the disposition is intended; parcel the land into
10 minimum size economic units sufficient for the
11 intended uses; make, or require the lessee to make
12 improvements as are required to achieve the intended
13 uses; set the upset price or lease rent based upon an
14 appraised evaluation of the property value adjustable
15 as provided in rules adopted in accordance with
16 chapter 91 to the specified use of the lot; set the
17 term of the lease, which shall be not less than
18 fifteen years nor more than fifty-five years,
19 including any extension granted for mortgage lending
20 or guarantee purposes; and establish other terms and
21 conditions as it may deem necessary, including but not



1 limited to restrictions against alienation and
2 provisions for withdrawal by the board;

3 (5) No lease shall be made to any person who is in arrears
4 in the payment of taxes, rents, or other obligations
5 owing the State or any county; [~~and~~]

6 (6) Any transferee, assignee, or sublessee of an
7 agricultural park lease shall first qualify as an
8 applicant under this chapter. For the purpose of this
9 paragraph, any transfer, assignment, sale, or other
10 disposition of any interest, excluding a security
11 interest, of any legal entity which holds an
12 agricultural park lease shall be treated as a transfer
13 of the agricultural park lease and shall be subject to
14 the approval of the board of agriculture upon
15 reasonable terms and conditions, not inconsistent with
16 this chapter or rules of the board, which the board
17 may deem necessary. No transfer shall be approved by
18 the board if the disposition of the stock, or assets
19 or other interest of the legal entity would result in
20 the failure of the entity to qualify for an
21 agricultural park lease[~~-~~]; and



1 (7) For dispositions by negotiation that require the
2 submission of sealed bids pursuant to rules adopted by
3 the department, in addition to selecting the applicant
4 who submits the highest offer as the lessee, the
5 department is authorized to select qualified
6 applicants who submit the next highest offers as back-
7 up lessees, with whom the department may enter into
8 negotiations upon the failure by the highest offering
9 lessee to finalize a lease for any reason."

10 SECTION 2. Section 166E-8, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) In all dispositions, the department shall be subject
13 to the requirements set forth in rules adopted by the board
14 consistent with section 166E-6 and subject to the following:

15 (1) All land and facilities shall be disposed of for
16 purposes of agricultural or aquacultural activities
17 only;

18 (2) Each lessee shall derive a major portion of the
19 lessee's total annual income earned from the lessee's
20 activities on the premises; provided that this
21 restriction shall not apply if:



- 1 (A) Failure to meet the restriction results from
- 2 mental or physical disability or the loss of a
- 3 spouse; or
- 4 (B) The premises are fully used in the production of
- 5 crops or products for which the disposition was
- 6 granted;
- 7 (3) The lessee shall comply with all federal and state
- 8 laws regarding environmental quality control;
- 9 (4) The board shall:
 - 10 (A) Determine the specific uses for which the
 - 11 disposition is intended;
 - 12 (B) Parcel the land into minimum size economic units
 - 13 sufficient for the intended uses;
 - 14 (C) Make, or require the lessee to make, improvements
 - 15 that are required to achieve the intended uses;
 - 16 (D) Set the upset price or lease rent based upon an
 - 17 appraised evaluation of the property value,
 - 18 adjustable to the specified use of the lot;
 - 19 (E) Set the term of the lease that shall be not less
 - 20 than fifteen years nor more than sixty-five
 - 21 years, including any extension granted for
 - 22 mortgage lending or guarantee purposes; and



1 (F) Establish other terms and conditions it deems
2 necessary, including but not limited to
3 restrictions against alienation and provisions
4 for withdrawal by the board; [~~and~~]

5 (5) Any transferee, assignee, or sublessee of a non-
6 agricultural park lease shall first qualify as an
7 applicant under this chapter. For the purpose of this
8 paragraph, any transfer, assignment, sale, or other
9 disposition of any interest, excluding a security
10 interest, by any legal entity that holds a non-
11 agricultural park lease shall be treated as a transfer
12 of the non-agricultural park lease and shall be
13 subject to the approval of the board and to reasonable
14 terms and conditions, consistent with this chapter or
15 rules of the board that the board may deem necessary.
16 No transfer shall be approved by the board if the
17 disposition of the stock or assets or other interest
18 of the legal entity would result in the failure of the
19 entity to qualify for a non-agricultural park land
20 lease[-]; and

21 (6) For dispositions by negotiation that require the
22 submission of sealed bids pursuant to rules adopted by



1 the department, in addition to selecting the applicant
 2 who submits the highest offer as the lessee, the
 3 department is authorized to select qualified
 4 applicants who submit the next highest offers as back-
 5 up lessees, with whom the department may enter into
 6 negotiations upon the failure by the highest offering
 7 lessee to finalize a lease for any reason."

8 SECTION 3. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Clarence K. Rushlow

Rama Thul

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[Signature]



S.B. NO. 2296

Report Title:

Agricultural Park Lands; Non-agricultural Park Lands; Back-up Lessees; Sealed Bidding

Description:

Authorizes the department of agriculture to select qualified applicants as back-up lessees when disposing of certain agricultural or non-agricultural park lands through the sealed bidding process. Authorizes the department to negotiate with a back-up lessee if the highest offering bidder or lessee fails to finalize a lease with the department for any reason.

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