

JAN 18 2013

A BILL FOR AN ACT

RELATING TO APPRAISALS.

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

1 SECTION 1. The legislature finds that the appraisal
2 processes utilized by the department of land and natural
3 resources to determine fair lease rent for state lands to be
4 used for agricultural and aquacultural production and support
5 are overly burdensome to the State's commercial agriculture and
6 aquaculture industries, add substantially to the time and costs
7 associated with establishing or expanding farming and ranching
8 enterprises in the State, and negatively impact long-term
9 agricultural and aquacultural tenure and investment. These
10 effects are contrary to the State's goals of expanding local
11 food production, increasing the State's self-sufficiency, and
12 improving the economic well-being of the State's rural farming
13 communities.

14 The legislature also finds that in order for agriculture
15 and aquaculture to flourish and reach their full potential in
16 the State, land availability and long-term tenure at affordable
17 and predictable lease rental rates are critical. When lease
18 rents are based solely on monetary considerations of fair market



1 value and highest and best use, local agriculture and
2 aquaculture industries suffer.

3 The appraisal valuation process instead should consider
4 factors such as physical site characteristics, past market
5 prices, global economic factors, percentage of usable land for
6 agricultural or aquacultural purposes, and the influence of risk
7 factors outside of farmers' and ranchers' control, such as
8 natural disasters. The process should also recognize the
9 numerous societal benefits of agriculture and aquaculture,
10 including sustainable food production, land conservation, and
11 preservation of open and green space.

12 Farmers and ranchers frequently make substantial
13 investments during the life of their leases, often financing
14 investments based on the income and expense projections existing
15 at the time. However, significant changes to projected land
16 rent can alter the viability of these investments.

17 By placing a limit on the percentage rent increase tied to
18 the consumer price index, farmers and ranchers may gain greater
19 certainty in their long-term financial forecasts and in
20 committing to farming infrastructure improvements. Similarly,
21 placing limits on potential appraisal costs may help farmers and
22 ranchers to manage their costs.



1 The purpose of this Act is to:

2 (1) Clarify that an employee of the board of land and
3 natural resources who appraises public lands for sale
4 or lease at public auction shall be qualified by
5 virtue of the employee's relevant work experience;

6 (2) Provide that the valuation of public agricultural or
7 aquacultural land be based on the land's agricultural
8 or aquacultural use, economic considerations, relevant
9 risk factors, and societal benefits;

10 (3) Limit the rent increase for lease renewals or
11 conversions of a revocable permit to a long-term lease
12 to the increase in the consumer price index; and

13 (4) Provide that for disinterested appraisals, costs
14 greater than one year's existing rent shall be borne
15 by the department of land and natural resources.

16 SECTION 2. Section 171-17, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§171-17 Appraisals.** (a) The appraisal of public lands
19 for sale or lease at public auction for the determination of the
20 upset price may be performed by an employee of the board of land
21 and natural resources qualified by virtue of the employee's
22 relevant work experience to appraise lands, or by one but not



1 more than three disinterested appraisers whose services shall be
2 contracted for by the board; provided that the upset price or
3 upset rental shall be determined by disinterested appraisal
4 whenever prudent management so dictates. No such lands shall be
5 sold or leased for a sum less than the value fixed by appraisal;
6 provided that [~~for~~]:

- 7 (1) For any sale or lease at public auction, the board may
8 establish the upset sale or rental price at less than
9 the appraisal value set by an employee of the board
10 and the land may be sold or leased at that price[-];
- 11 (2) The value of land classified or used for agriculture
12 or aquaculture, including the value of land classified
13 for conservation, shall be the value of the land for
14 agricultural or aquacultural use without regard to any
15 value that the land might have for other purposes or
16 uses, or to neighboring land uses; and
- 17 (3) For a lease renewal or the conversion of a revocable
18 permit to a long-term lease, the percentage rent
19 increase shall not exceed the increase in the consumer
20 price index since the most recent prior rent
21 appraisal.



1 The board shall be reimbursed by the purchaser or lessee for the
2 cost of any appraisal required to be made by a disinterested
3 appraiser or appraisers contracted for by the board[-]; provided
4 that for a lease renewal or conversion from a revocable permit
5 to a long-term lease, any appraisal cost greater than one year's
6 existing rent shall be borne by the department.

7 (b) The sale price or lease rental of lands to be disposed
8 of by drawing or by negotiation shall be no less than the value
9 determined by:

10 (1) An employee of the board qualified by virtue of the
11 employee's relevant work experience to appraise lands;

12 or

13 (2) A disinterested appraiser or appraisers whose services
14 shall be contracted for by the board, and such
15 appraisal, and any further appraisal with the approval
16 of the board, shall be at the cost of the purchaser;

17 provided that the sale price or lease rental shall be determined
18 by disinterested appraisal whenever prudent management so

19 dictates[+]. The value of land classified or used for

20 agriculture or aquaculture, including the value of land

21 classified for conservation, shall be the value of the land for

22 agricultural or aquacultural use without regard to any value



1 that the land might have for other purposes or uses, or to
2 neighboring land uses. For a lease renewal or conversion from a
3 revocable permit to a long-term lease, the percentage rent
4 increase shall not exceed the increase in the consumer price
5 index since the most recent prior rent appraisal. [~~provided~~
6 ~~further that should~~] If the purchaser [~~fail~~] fails to agree upon
7 the sale price or lease rental, the purchaser may appoint an
8 appraiser who together with the board's appraiser shall appoint
9 a third appraiser, and the sale price or lease rental shall be
10 determined by arbitration as provided for in chapter 658A, which
11 shall be final and binding. The purchaser shall pay for all
12 appraisal costs, except that the cost of the third appraiser
13 shall be borne equally by the purchaser and the board[+];
14 provided that for a lease renewal or conversion from a revocable
15 permit to a long-term lease, any appraisal cost greater than one
16 year's existing rent shall be borne by the department.

17 (c) In the repurchase of any land by the board, the board
18 shall have the option to repurchase the land for the original
19 sale price or the fair market value at the time of repurchase,
20 whichever is the lower. Any improvements affixed to the realty
21 shall be purchased at their fair market value. At the time of
22 the repurchase, the fair market value of the land, and the



1 improvements, if any, shall be determined by a qualified
2 appraiser whose services shall be contracted for by the board;
3 provided that should the owner fail to agree upon the value, the
4 owner may appoint the owner's own appraiser who together with
5 the board's appraiser shall appoint a third appraiser, and the
6 value shall be determined by arbitration as provided in chapter
7 658A. The owner shall pay for all appraisal costs, except that
8 the cost of the third appraiser shall be borne equally by the
9 purchaser and the board.

10 (d) In the event of reopening of the rental to be paid on
11 a lease, the rental for any ensuing period shall be the fair
12 market rental at the time of reopening[-]; provided that the
13 value of land classified or used for agriculture or aquaculture,
14 including the value of land classified for conservation, shall
15 be the value of the land for agricultural or aquacultural use
16 without regard to any value that the land might have for other
17 purposes or uses, or to neighboring land uses. The percentage
18 rent increase shall not exceed the increase in the consumer
19 price index since the most recent prior rent appraisal. At
20 least six months prior to the time of reopening, the fair market
21 rental shall be determined by:



1 (1) An employee of the department qualified by virtue of
2 the employee's relevant work experience to appraise
3 lands; or

4 (2) A disinterested appraiser whose services shall be
5 contracted for by the board;

6 and the lessee shall be promptly notified of the determination;
7 provided that should the lessee fail to agree upon the fair
8 market rental, the lessee may appoint the lessee's own appraiser
9 who together with the board's appraiser shall appoint a third
10 appraiser and the fair market rental shall be determined by
11 arbitration as provided in chapter 658A. The lessee shall pay
12 for the lessee's own appraiser, the board shall pay for its
13 appraiser, and the cost of the third appraiser shall be borne
14 equally by the lessee and the board[-]; provided that any
15 appraisal cost greater than one year's existing rent shall be
16 borne by the department. Any language in present leases to the
17 contrary notwithstanding, the provisions of this subsection,
18 when possible and notwithstanding the six-month notice required,
19 shall apply to leases with original lease rental reopening dates
20 effective before and after July 1, 1996.



1 (e) Whenever more than one appraiser is appointed, each
2 shall prepare and submit an independent appraisal. All
3 appraisal reports shall be available for study by the public.

4 (f) In determining the fair market value and highest and
5 best use of lands that are classified or used for agriculture or
6 aquaculture, consideration shall be given to rent; productivity;
7 nature of actual agricultural or aquacultural use; location;
8 accessibility; transportation facilities; size; shape;
9 percentage of usable land for intended purpose; elevation;
10 topography; quality of soil; insolation and wind conditions;
11 water privileges; availability and cost of water and utilities;
12 easements and appurtenances; the opinions of persons who may be
13 considered to have special knowledge of agricultural and
14 aquacultural land values; past, current, and anticipated market
15 prices; global economic factors; the influence of risk factors
16 outside of farmers' and ranchers' control, such as natural
17 disasters; and societal benefits of agriculture and aquaculture,
18 including sustainable food production, land conservation, and
19 preservation of open and green space."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 4. This Act, upon its approval, shall take effect
2 retroactive to January 1, 2012.

3

INTRODUCED BY: *Clarence Mitchell*

Paul Bl

David J. J.

[Signature]



Report Title:

DLNR; Appraisals; Agriculture; Aquaculture; Leases; Rates

Description:

Requires valuation of public agricultural or aquacultural land to be based on the land's agricultural or aquacultural use, economic considerations, relevant risk factors, and societal benefits. In the case of disinterested appraisals, requires that costs greater than one year's existing rent shall be borne by DLNR.

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

