

**ACT 141**

A Bill for an Act Relating to the Establishment, Administration and Taxation of Tree Farm Property.

*Be it Enacted by the Legislature of the State of Hawaii:*

SECTION 1. **Statement of policy.** It is the intent and purpose of the legislature that by encouraging the establishment of tree farms, (1) lands which are suitable only for growth of trees will be put to productive use; (2) the economic development of the State will be enhanced; and (3) ultimately the tax base will be broadened.

SECTION 2. **Definitions.** When used herein:

- (a) "Board" means the board of land and natural resources.
- (b) "Department" means the department of land and natural resources.
- (c) "Stumpage value" means the value that a willing buyer will pay

to a willing seller per thousand board feet for trees standing and uncut. This value shall not include logging costs.

(d) The term "owner" shall include any person leasing the real property of another under a lease having a stated term of not less than thirty years.

**SECTION 3. Eligibility.** Any property of not less than thirty acres is eligible for classification as tree farm property if it is suited for the raising of trees of commercial specie in quantity sufficient to establish a business in the sale thereof and not suited for some higher and better use. Property on which the owner is already growing trees of commercial specie (in quantity sufficient to establish a business in the sale thereof) under good forestry management practices and which the owner agrees to manage in accordance with rules and regulations prescribed by the board may also be classified as tree farm property. Additional noncontiguous property of fifteen acres or more, under the same ownership and in the same vicinity, may be eligible for classification with the main acreage sought to be so classified.

No real property held by an owner under a lease having an unexpired term of less than thirty years shall be eligible for classification as tree farm property.

**SECTION 4. Applications.** The owner of any property which complies with the requirements specified in section 3 may apply to the board for classification of his property as tree farm property. The application shall include a description of the property and such additional information as may be required by the board. Such application shall state that all persons having any interest in or holding any encumbrance upon the property have joined in making the application and that all of them will comply with the laws and regulations relating to the use, development and protection of the trees and the property and those relating to the harvesting and removal of forest products.

**SECTION 5. Classification.** If the board finds that the property identified in the application is suitable for the raising of trees of commercial species, in quantity sufficient to establish a business in the sale thereof, the board shall notify the department of taxation, in writing and by September 1, of its finding. Then the department of taxation shall, by November 15, make a finding of fact as to the highest and best use of the property and shall inform the board of its findings in writing. Such determination as to the highest and best use of the property shall be based upon all available information on soils, climate, land use trends, watershed values, present use of surrounding similar lands and other criteria as may be appropriate.

If the department of taxation finds that the highest and best use of the property is for the raising of trees of commercial species in quantity sufficient to establish a business in the sale thereof, the property shall be classified by the board and the department of taxation as tree farm property. If the department of taxation does not find that the highest and best use of the property is for the raising of such trees in such quantity, the application shall be disapproved.

The applicant may appeal any disapproved applications as in the case of an appeal from an assessment.

Lands classified as tree farm property shall be administered by the board. The board may from time to time, make such rules and regulations for their administration.

**SECTION 6. Agreement with owner.** Upon classification, the board shall be responsible for preparing, executing and administering an agreement with the applicant and others having an interest in or encumbrance upon the tree farm property. The agreement shall be for a period of not less than thirty years but shall contain, inter alia, the following conditions:

(a) the agreement shall be cancelled and terminated and the tree farm property shall thereby be declassified and become subject to the conditions specified in section 9 of this Act if, upon investigation by the department, the board determines that the owner of the property is not complying with the provisions of this Act or the agreement.

(b) any owner of tree farm property desiring to withdraw all or part of such property from the operations of this Act may at any time make written application to the board and such application shall be approved subject to the conditions specified in section 9.

(c) the owner shall develop and maintain trees of commercial specie, as determined by the department, either through planting or reproduction and in accordance with rules and regulations of the department.

The agreement shall also contain such other terms and conditions as deemed advisable by the board.

**SECTION 7. Development and maintenance of tree farm property.** Within one year following the agreement described in section 6, the applicant shall have established trees of the species designated in the agreement on not less than one-fortieth of the acreage in the entire tree farm property, or five acres, whichever is larger. On property adequately stocked with commercial trees at the time of classification, the owner shall, within one (1) year of the classification, apply such forestry measures as may be deemed necessary by the board to not less than one-fortieth of the acreage, or five acres, whichever is larger. Each year subsequent to the first year, the owner must apply good forestry management practices, as prescribed by the board, on additional equivalent acreage until such time as all the property classified as tree farm property is under good forestry management practices.

Following the cutting of forest products from tree farm property, a period of three years shall be allowed the owner to obtain adequate stocking or restocking of trees of commercial specie on the property and if after a period of three years the owner has not established a stand of commercial timber thereon in accordance with the rules and regulations of the board, such property shall be declassified from its status as tree farm property.

**SECTION 8. Exemption from real property tax.** Any property classified as tree farm property by the board and the department of taxation shall not, as long as the agreement described in section 6 is in effect, be subject to the real property tax set forth in chapter 128 of the Revised Laws of Hawaii 1955 as amended, provided, however, that this exemption shall take effect as of January 1 of the year following the execution of such agreement.

**SECTION 9. Declassification.** Upon declassification by the board, for any reason, of all or any portion of any tree farm property, the board shall notify the owner and the department of taxation of such declassification. In that event, the department of taxation

(a) shall cancel the exemption from property taxes provided by this Act retroactive to the date that the property became exempt from real property taxes as provided by section 8 hereof and the property taxes that would have become due and payable (but for the exemption) for all the years that such exemption was in effect shall become immediately due and payable together with a five per cent per annum penalty from the respective dates that those tax payments would otherwise have been due;

(b) shall assess the total stumpage value of the commercial trees then growing or standing on such property, in its entirety, to the owner or owners thereof and shall levy the yield tax described in section 10 of this Act, which tax shall become immediately due and payable;

(c) shall thereafter assess and tax such declassified property and the owners thereof as provided in chapter 128 of the Revised Laws of Hawaii 1955 as amended.

Willful destruction of all or any portion of the tree farm property by any owner thereof shall be grounds for declassification but destruction thereof or damage thereto by causes or persons beyond the control of the owner or owners shall not be construed as willful action or negligence of the owner.

If, upon declassification of any portion of tree farm property, the property in the same vicinity remaining classified as tree farm property is not thirty acres or more, all of such remaining tree farm property shall also be declassified.

Failure to extend or renew the agreement described in section 6 shall result in the return of such tree farm property to taxable status.

**SECTION 10. Yield tax; returns; payment; collection.** Upon harvesting of the trees for commercial purposes, the owner shall, on forms provided by the department of taxation, file monthly returns showing the total stumpage value of the trees cut during the preceding month, together with such other information as may be required.

There shall be annually assessed upon and collected from the owner or owners of the trees cut a yield tax equal to five per cent of the stumpage value of the merchantable trees cut. This tax shall be in lieu of all real property taxes and all general excise taxes set out in chapters 128 and 117, respectively, of the Revised Laws of Hawaii 1955 as amended. However, returns required hereunder shall be filed, taxes levied hereunder (including penalties and interest thereon) shall be enforced, paid and collected, and records shall be kept by taxpayer and shall be open to inspection, all in the same manner required of general excise taxes as provided in said chapter 117, except that the stumpage value shall be the value upon which the yield tax shall be computed, levied and collected.

All trees cut on tree farm property shall be subject to the yield tax except trees cut by the owner for use in the harvesting of trees or for other use by the owner of the tree farm property, provided, however, that if such trees are sold or conveyed to the ownership or control of

other persons or transferred onto other property, they shall be subject to the yield tax.

**SECTION 11. Determination of marketability; harvesting.** When, as determined by the department, the trees growing or standing on any tree farm property become suitable for marketing, the trees shall be harvested for sale or other income producing disposition within five years after such determination is made, provided, however, that no such determination shall be made within ten years after classification of the property as tree farm property. If such trees are not harvested for sale or other income producing classification within said five years, the property upon which they are growing or standing shall be declassified from its status as tree farm property.

**SECTION 12. Additional lands.** An owner of land may at any time apply to the board to have more acreage classified as tree farm property subject either to a new agreement or to the original agreement; provided that if such land is in the same vicinity of the original tree farm property and the area is less than five hundred acres it shall become a part and parcel of the original tree farm property and shall be subject to the terms of the original agreement.

**SECTION 13. Appeals.** Any person aggrieved by any assessment of the yield tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 121-46, provided that the tax so assessed shall have been paid.

**SECTION 14. Effective date.** This Act shall take effect upon its approval.

(Approved June 3, 1963.) **H.B. 20.**

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