

**ACT 159**

A Bill for an Act Relating to the Establishment, Administration and Taxation of Orchards Producing Merchantable Fruits and Nuts.

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

**SECTION 1. Declaration of policy.** The purpose of this Act is to encourage the use of private and leasehold property for the establishment of orchards producing merchantable fruits and nuts if such use is the highest and best use of such property. The establishment of such orchards will enhance the economic development of the State and ultimately will broaden the tax base.

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

- (a) "Board" means the board of agriculture;
- (b) "Department" means the department of agriculture;
- (c) "Orchard property" means any property (as defined in section

128-1 of the Revised Laws of Hawaii 1955, as amended) classified as orchard property pursuant to the provisions of this Act; and

(d) The term "owner" shall include a lessee of real property with an unexpired lease term of not less than the period of the agreement provided in section 5 of this Act.

**SECTION 3. Eligibility; application.** The owner of any property which is suitable for the raising of merchantable fruits or nuts having a normal period of development from the initial time of planting to the first harvest of not less than three years and which contains an area sufficient to make such undertaking economically feasible may apply to the board for the classification of his property as orchard property.

The board shall prescribe the form of the application. The application shall be filed with the board by July 1 of any calendar year.

**SECTION 4. Classification, appeal.** Upon a finding by the board that the property described in the application is eligible for classification as orchard property, the board shall, on or before September 1 immediately following the date of filing of such application, notify the department of taxation in writing of its finding. Within seventy-five days after receipt of such notification, the department of taxation shall make a finding of fact as to the highest and best use of the property and shall inform the board of its finding in writing. Such finding shall be based upon all available information on soils, climate, land use trends, use of surrounding similar lands and other criteria as may be appropriate and shall specify the orchard crop, if any, which is best suited for the property.

If the department of taxation finds that the highest and best use of the property is for the raising of trees producing fruits or nuts having a normal period of development from the initial time of planting to the first harvest of not less than three years and that the property contains an area sufficient to make such undertaking economically feasible, the application shall be approved by the board and the department of taxation and the property shall be classified as orchard property. The owner may appeal any disapproved application as in the case of an appeal from an assessment.

**SECTION 5. Agreement.** Upon approval of the application, the owner shall enter into an agreement with the board relative to the establishment and management of the orchard property. The agreement shall contain the following terms and conditions:

(a) The term of the agreement shall be for two years beyond the normal period of development from the initial time of planting to the first harvest of the orchard crop determined by the board to be best suited for the orchard property;

(b) The owner shall plant and maintain trees producing fruits or nuts of a commercial specie, as determined by the board, in accordance with the rules and regulations established by the board. The planting shall be commenced within one year following the execution of the agreement on such acreage as the board shall determine. Each year subsequent to the first year, the owner shall plant such trees on equivalent acreage until such time as all the orchard property is under good orchard management practices;

(c) Any owner of orchard property may withdraw all or part of such property from the operations of this Act at any time by making written application to the board and such application shall be approved subject to the conditions specified in section 7 of this Act; provided, however, that the provisions of section 7 shall not apply if the owner shall have faithfully complied with the terms and conditions contained in the agreement for one crop cycle;

(d) The agreement shall be cancelled and terminated and the property shall thereby be declassified and become subject to the conditions specified in section 7 of this Act if, upon investigation, the board determines that the owner of the orchard property is not complying with the provisions of this Act or of the agreement; and

(e) The agreement shall also contain such other terms and conditions set by the board.

**SECTION 6. Exemption from real property tax.** Orchard property, during the period of such classification, shall be exempt from real property taxes 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 the agreement provided in section 5 of this Act and shall in any event terminate on December 31 of the year of expiration of such agreement.

**SECTION 7. Declassification.** Upon declassification by the board, for reason of failure on the part of the owner to comply with the terms and conditions contained in the agreement, or to comply with the provisions of this Act or with the minimum standards set by the board, of all or any portion of the orchard property, the board shall notify the owner and the department of taxation of such declassification. In such event, the department of taxation

(a) shall cancel the exemption from property taxes on the property which has been declassified retroactive to the date that such property became exempt from real property taxes as provided by section 6 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 on such declassified property 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; and

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

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

If, upon declassification of any portion of orchard property, the property of the owner in the same vicinity remaining classified as orchard property shall be so small as to fail to be an economically feasible operation, under standards previously determined, such orchard property shall be declassified.

**SECTION 8. Determination of marketability; harvesting.** When, as determined by the department, the fruits or nuts growing on any orchard property become suitable for marketing, the fruits or nuts shall

be harvested for sale within a reasonable time after such determination is made and the failure to follow such a course of action shall be grounds for declassification as provided in section 7 of this Act.

SECTION 9. **Additional lands.** The owner may at any time apply to the board to have additional acreage classified as orchard property subject either to a new agreement or to the principal agreement; provided that if such land is in the same vicinity of the original orchard property and the area is less than the economic unit for such undertaking it shall become a part and parcel of the original unit and shall be subject to the terms of the principal agreement.

SECTION 10. **Effective date.** This Act shall take effect upon its approval.

(Approved June 3, 1963.) **H.B. 622.**

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