

ACT 157

H.B. NO. 2271

A Bill for an Act Relating to Non-Agricultural Park Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 166E, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

“§166E-A Disposition. (a) Any provision of this chapter to the contrary notwithstanding, the department may dispose of:

- (1) Public lands and related facilities set aside and designated for use pursuant to this chapter; and
- (2) Other lands and facilities under the jurisdiction of the department pursuant to section 166E-B and notwithstanding chapter 171, by negotiation, drawing of lot, conversion, or public auction.

Except as provided by subsection (d), the department shall dispose of public lands by lease.

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

- (1) All land and facilities shall be disposed of for purposes of agricultural or aquacultural activities only;
- (2) Each lessee shall derive a major portion of the lessee's total annual income earned from the lessee's activities on the premises; provided that this restriction shall not apply if:
 - (A) Failure to meet the restriction results from mental or physical disability or the loss of a spouse; or
 - (B) The premises are fully used in the production of crops or products for which the disposition was granted;
- (3) The lessee shall comply with all federal and state laws regarding environmental quality control;
- (4) The board shall:
 - (A) Determine the specific uses for which the disposition is intended;
 - (B) Parcel the land into minimum size economic units sufficient for the intended uses;
 - (C) Make, or require the lessee to make, improvements that are required to achieve the intended uses;
 - (D) Set the upset price or lease rent based upon an appraised evaluation of the property value, adjustable to the specified use of the lot;
 - (E) Set the term of the lease that shall be not less than fifteen years nor more than sixty-five years, including any extension granted for mortgage lending or guarantee purposes; and
 - (F) Establish other terms and conditions it deems necessary, including but not limited to restrictions against alienation and provisions for withdrawal by the board; and
- (5) Any transferee, assignee, or sublessee of a non-agricultural park lease shall first qualify as an applicant under this chapter. For the purpose of this paragraph, any transfer, assignment, sale, or other disposition of any interest, excluding a security interest, by any legal entity that holds a non-agricultural park lease shall be treated as a transfer of the non-agricultural park lease and shall be subject to the approval of the board and to reasonable terms and conditions, consistent with this chapter or

rules of the board that the board may deem necessary. No transfer shall be approved by the board if the disposition of the stock or assets or other interest of the legal entity would result in the failure of the entity to qualify for a non-agricultural park land lease.

(c) After notice of the breach or default as provided in rules adopted by the board consistent with section 166E-6, a violation of any provision in this section shall be cause for the board to cancel the lease and take possession of the land.

(d) The board may issue easements, licenses, permits, and rights-of-entry for uses that are consistent with the purposes for which the lands were set aside or are otherwise subject to the authority of the department pursuant to section 166E-B.

§166E-B Authority to plan, develop, and manage non-agricultural park lands. In accordance with this chapter, the department may plan, develop, and manage non-agricultural park lands on:

- (1) Public lands set aside by executive order for use as non-agricultural park lands pursuant to section 171-11;
- (2) Other lands with the approval of the board that may be subject to a joint venture partnership agreement pursuant to section 166E-C; and
- (3) Lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 155-4(11).

§166E-C Non-agricultural park land development. On behalf of the State or in partnership with a federal agency, a county, or a private party and except as provided in this section, the department may develop non-agricultural park lands that, at the option of the board, may be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and construction of buildings thereon; provided that:

- (1) The board finds the development is consistent with the public purpose and intent of this chapter and meets minimum health and safety requirements;
- (2) The development of the proposed non-agricultural park land does not contravene any safety standards or tariffs approved by the public utilities commission for public utilities;
- (3) The county in which the non-agricultural park development is proposed shall approve the non-agricultural park development; and provided further that:
 - (A) The county shall approve or disapprove the development within forty-five days after the department submits preliminary plans and specifications for the development to the county. If the county does not disapprove the development after the forty-fifth day, the development shall be deemed approved;
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees, on any actions taken by them in reviewing, approving, or disapproving the plans and specifications; and
 - (C) The final plans and specifications for the development shall be deemed approved by the county if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the planning, zoning, building, construction, and subdivision standards for that development. For purposes of sections 501-85 and 502-17, the chairperson of the board or the responsible county official may certify maps and plans of lands connected with the development as having complied with appli-

- cable laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and
- (4) The State shall assume the responsibility of maintaining all roads and infrastructure improvements within the boundaries if the improvements are developed exempt from applicable county ordinances, charter provisions, and rules regarding development.

§166E-D Lease negotiation. (a) The department may negotiate and enter into leases with any person who:

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

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

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

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

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

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

§166E-E Policy. Notwithstanding chapter 171, disposition of lands set aside for use pursuant to this chapter shall not be subject to the prior approval of the board of land and natural resources.

§166E-F Rights of holders of security interests. (a) Prior board action shall be required when an institutional lender acquires the lessee's interest through a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the lessee's interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances.

(b) Notwithstanding any provisions of this chapter, if any lease is subject to a security interest held by an institutional lender and if the institutional lender has given to the board a copy of the encumbrance as recorded in the bureau of conveyances:

- (1) If the lease is canceled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, the institutional lender shall be entitled to issuance of a new lease in its name for a term equal to the term of the lease remaining immediately prior to the cancellation, termination, or rejection, with all terms and conditions being the same as in the canceled, terminated, or rejected lease, except only for the liens, claims, and encumbrances, if any, that were superior to the institutional lender before the cancellation, termination, or rejection. If a lease is rejected or deemed rejected under bankruptcy law, the lease shall be deemed canceled and terminated for all purposes under state law;
- (2) If the lessee's interest under a lease is transferred to an institutional lender, including by reason of the provisions of paragraph (1), by reason of acquisition of the lessee's interest pursuant to a foreclosure sale, judicial or nonjudicial, and by reason of an assignment in lieu of foreclosure:
 - (A) The institutional lender shall be liable for the obligations of the lessee under the lease for the period of time during which the institutional lender is the holder of the lessee's interest but shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease; and
 - (B) The provisions of section 166E-A(b)(1) and (2) shall not apply to the lease or the demised land during such time as the institutional lender holds the lease; provided that:
 - (i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation, termination, or rejection to the satisfaction of the board; and
 - (ii) The new lease issued to the institutional lender shall terminate one hundred twenty days from the effective date of issuance, when the institutional lender shall either sell or assign the lease,
after which date section 166E-A(b)(1) and (2) shall apply to the new lease;
- (3) As long as there is a delinquent loan balance secured by a security interest, the lease may not be canceled or terminated, except for cancellation by reason of default of the lessee, and no increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, may be imposed or become payable, and no lands may be withdrawn from the lease, except by eminent domain proceedings beyond the control of the board, except with prior written consent by the institutional lender and that consent shall not be unreasonably withheld; and
- (4) If the lease contains any provision requiring the payment of a premium to the lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender shall have been paid in full.
 - (c) Ownership of both the lease and the security interest by an institutional lender shall not effect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the estates with the consent of the board.
 - (d) The board may include in any consent form or document provisions consistent with the intent of this section as may be required to make a lease mortgageable or more acceptable for mortgageability by an institutional lender.

(e) The rights of a purchaser, assignee, or transferee of an institutional lender's security interest, including a junior lien holder, shall be exercisable by the purchaser, assignee, or transferee as successor in interest to the institutional lender; provided that:

- (1) The purchase, assignment, or transfer shall conform with subsection (b)(4); and
- (2) The purchase, assignment, or transfer of such rights shall be reserved for and exercisable only by an institutional lender.

Other purchasers may not be precluded from acquiring the institutional lender's security interest but shall not have exercisable rights as successor in interest to the original institutional lender.

(f) For the purposes of this section:

"Institutional lender" means a federal, state, or private lending institution licensed to do business in the state and that makes loans to qualified applicants under this chapter on the basis of a lease awarded pursuant to this chapter for security, in whole or in part, together with any other entity that acquires all or substantially all of an institutional lender's loan portfolio.

"Making a loan" means lending of new money or the renewal or extension of indebtedness owing by a qualified applicant to an institutional lender, after June 30, 2006.

"Security interest" means any interest created or perfected by a mortgage, assignment by way of mortgage, or by a financing statement and encumbering a lease, land demised by the lease, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised land."

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

"Aquacultural activities" means the farming or ranching or any plant or animal species in a controlled salt, brackish, or freshwater environment; provided that the farm or ranch is on or directly adjacent to land."

SECTION 3. Section 166E-6, Hawaii Revised Statutes, is amended to read as follows:

"[§166E-6] Rules. The board shall adopt rules pursuant to chapter 91, including eligibility requirements for each disposition and applicant qualifications, to effectuate the purposes of this chapter."

SECTION 4. In codifying the new sections added to chapter 166E, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designations of and references to those new sections.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 31, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.