

JAN 17 2020

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. The legislature finds that the department of
2 agriculture's non-agricultural park lands program supports,
3 among others, new and bona fide farmers, who are generally
4 farmers engaged in diversified agriculture on smaller parcels,
5 in gaining a foothold in the agricultural industry. The
6 legislature further finds that technological advances have
7 created opportunities for innovation in agriculture to improve
8 efficiency, increase yields, and encourage sustainable farming
9 practices. However, these technologies often require high
10 investments of capital that farmers are often unable to access
11 alone. By partnering with investors or establishing
12 partnerships with others who have access to capital, farmers may
13 be able to invest in these technologies to establish and grow
14 their businesses.

15 The legislature finds that the department of agriculture's
16 administrative rules on the non-agricultural park lands program
17 require bona fide farmers to be: individuals who meet certain



1 qualifications; agricultural cooperatives or other agricultural
2 associations or partnerships, at least seventy-five per cent of
3 the members of which would qualify individually as bona fide
4 farmers; or corporations incorporated primarily for agricultural
5 production purposes where at least seventy-five per cent of
6 trustees, officers, stockholders, and members qualify
7 individually, excluding a holder of record having a security
8 interest.

9 The legislature further finds that there may be confusion
10 regarding qualifications for bona fide farmers. Specifically, a
11 durational Hawaii residency requirement may apply to bona fide
12 farmers, despite the fact that chapter 166E, Hawaii Revised
13 Statutes, relating to non-agricultural park lands, does not
14 include such a requirement. The legislature believes that the
15 law should more clearly specify the application of the
16 definition of "bona fide farmer" and broaden the types of
17 entities that may qualify for non-agricultural park leases.

18 The purpose of this Act is to expand opportunities for
19 certain entities, including farmers, to obtain investment
20 capital for their operations and be eligible for non-
21 agricultural park leases.



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

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

6 (1) All land and facilities shall be disposed of for
7 purposes of agricultural or aquacultural activities
8 only;

9 (2) Each lessee shall derive a major portion of the
10 lessee's total annual income earned from the lessee's
11 activities on the premises; provided that this
12 restriction shall not apply if:

13 (A) Failure to meet the restriction results from
14 mental or physical disability or the loss of a
15 spouse; or

16 (B) The premises are fully used in the production of
17 crops or products for which the disposition was
18 granted;

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

21 (4) The board shall:



- 1 (A) Determine the specific uses for which the
- 2 disposition is intended;
- 3 (B) Parcel the land into minimum size economic units
- 4 sufficient for the intended uses;
- 5 (C) Make, or require the lessee to make, improvements
- 6 that are required to achieve the intended uses;
- 7 (D) Set the upset price or lease rent based upon an
- 8 appraised evaluation of the property value,
- 9 adjustable to the specified use of the lot;
- 10 (E) Set the term of the lease that shall be not less
- 11 than fifteen years nor more than sixty-five
- 12 years, including any extension granted for
- 13 mortgage lending or guarantee purposes; and
- 14 (F) Establish other terms and conditions it deems
- 15 necessary, including but not limited to
- 16 restrictions against alienation and provisions
- 17 for withdrawal by the board; [~~and~~]
- 18 (5) Any transferee, assignee, or sublessee of a non-
- 19 agricultural park lease shall first qualify as an
- 20 applicant under this chapter. For the purpose of this
- 21 paragraph, any transfer, assignment, sale, or other



1 disposition of any interest, excluding a security
2 interest, by any legal entity that holds a non-
3 agricultural park lease shall be treated as a transfer
4 of the non-agricultural park lease and shall be
5 subject to the approval of the board and to reasonable
6 terms and conditions, consistent with this chapter or
7 rules of the board that the board may deem necessary.
8 No transfer shall be approved by the board if the
9 disposition of the stock or assets or other interest
10 of the legal entity would result in the failure of the
11 entity to qualify for a non-agricultural park land
12 lease[+]; and

13 (6) Any provision in this chapter to the contrary
14 notwithstanding, when a person, whether individual,
15 agricultural cooperative, agricultural association,
16 partnership, or corporation incorporated primarily for
17 agricultural production purposes, seeks an
18 agricultural lease to construct and operate a facility
19 for agriculture or aquaculture that requires more than
20 \$500,000 in construction and equipment acquisition
21 costs make the facility operational, the board may



1 determine that person is eligible for the lease;

2 provided that:

3 (A) The agricultural or aquacultural use is based on
4 operations or methodology that require high,
5 advanced, or innovative technology and
6 substantial initial capital funding;

7 (B) No less than fifty-one per cent of the
8 operational decision-making authority regarding
9 crop or product selection and pricing is held by
10 persons who are:

11 (i) Either citizens of the United States who
12 have resided in the State for at least three
13 years or permanent status aliens who have
14 resided in the State for at least five
15 years; and

16 (ii) Bona fide farmers, as described in section
17 171-68;

18 (C) The agricultural or aquacultural operations are
19 primarily to produce food crops or products that
20 contribute to the replacement of similar food



1 crops or products that are imported into the
2 State; and

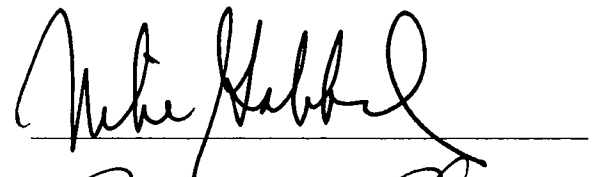
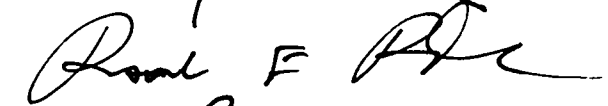
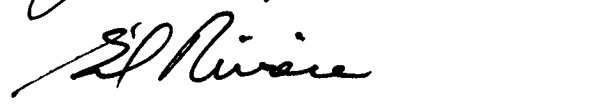
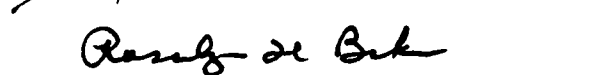
3 (D) The board finds that making the determination of
4 eligibility is in the best interests for
5 agriculture in the State and is consistent with
6 the department's mission and priorities."

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

9 SECTION 4. This Act shall take effect on July 1, 2020, and
10 shall be repealed on June 30, 2025; provided that section
11 166E-8(b), Hawaii Revised Statutes, shall be reenacted in the
12 form in which it read on the day prior to the effective date of
13 this Act.

14

INTRODUCED BY:

S.B. NO. 2702

Report Title:

Department of Agriculture; Non-agricultural Park Lands Program;
Bona Fide Farmer; Qualifications

Description:

Temporarily authorizes the Board of Agriculture to decide on a case-by-case basis which entities qualify for a non-agricultural park lease. Establishes conditions and qualifications for a lease. Sunsets 6/30/2025.

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

