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# A BILL FOR AN ACT

RELATING TO NON-AGRICULTURAL PARK LANDS.

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

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

4 "§166E-A Disposition. (a) Any provision of this chapter  
5 to the contrary notwithstanding, the department may by  
6 negotiation, drawing of lot, or public auction directly dispose  
7 of public lands and related facilities set aside and designated  
8 for use pursuant to chapter 166E, and any other lands and  
9 facilities under the jurisdiction of the department pursuant to  
10 section 166E-B and notwithstanding chapter 171. Except as  
11 provided by subsection (c), dispositions may be by lease and  
12 shall be subject to the requirements set forth in rules adopted  
13 by the board in conformity with section 166E-6, and subject also  
14 to the following terms and conditions:

- 15 (1) The property shall be disposed of for agricultural or  
16 aquacultural purposes only;  
17 (2) The lessee shall derive the major portion of the  
18 lessee's total annual income from the lessee's



1 activities on the premises; provided that this  
 2 restriction shall not apply if failure to meet the  
 3 restriction results from mental or physical disability  
 4 or the loss of a spouse, or if the premises are fully  
 5 used in the production of crops or products for which  
 6 the disposition was granted;

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

9 (4) The board shall determine the specific uses for which  
 10 the disposition is intended; parcel the land into  
 11 minimum size economic units sufficient for the  
 12 intended uses; make, or require the lessee to make,  
 13 improvements as are required to achieve the intended  
 14 uses; set the upset price or lease rent based upon an  
 15 appraised evaluation of the property value adjustable  
 16 as provided in rules adopted in accordance with  
 17 chapter 91 to the specified use of the lot; set the  
 18 term of the lease, which shall be not less than  
 19 fifteen years nor more than sixty-five years,  
 20 including any extension granted for mortgage lending  
 21 or guarantee purposes; and establish other terms and  
 22 conditions as it may deem necessary, including but not



1           limited to restrictions against alienation and  
2           provisions for withdrawal by the board; and  
3           (5) Any transferee, assignee, or sublessee of a non-  
4           agricultural park lease shall first qualify as an  
5           applicant under this chapter. For the purpose of this  
6           paragraph, any transfer, assignment, sale, or other  
7           disposition of any interest, excluding a security  
8           interest, of any legal entity that holds a non-  
9           agricultural park lease shall be treated as a transfer  
10           of the non-agricultural park lease and shall be  
11           subject to the approval of the board upon reasonable  
12           terms and conditions, not inconsistent with this  
13           chapter or rules of the board, which the board may  
14           deem necessary. No transfer shall be approved by the  
15           board if the disposition of the stock or assets or  
16           other interest of the legal entity would result in the  
17           failure of the entity to qualify for a non-  
18           agricultural park land lease.

19           (b) The violation of any provision in this section shall  
20 be sufficient cause for the board, after due notice of breach or  
21 default as provided in rules adopted by the board in conformance



1 with section 166E-6, to cancel the lease and take possession of  
2 the land.

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

7 **§166E-B Authority to plan, develop, and manage non-**  
8 **agricultural park lands.** The department may plan, develop, and  
9 manage non-agricultural park lands, in accordance with this  
10 chapter, on public lands set aside by executive order for use as  
11 non-agricultural park lands pursuant to section 171-11, on other  
12 lands with the approval of the board as may be subject to a  
13 joint venture partnership agreement pursuant to section 166E-C,  
14 and on lands acquired by the department by way of foreclosure,  
15 voluntary surrender, or otherwise pursuant to section 155-4(11).

16 **§166E-C Non-agricultural park land development.** Except as  
17 herein provided, the department may develop, on behalf of the  
18 State or in partnership with a federal agency, a county, or a  
19 private party, non-agricultural park lands that, at the option  
20 of the board, may be exempt from all statutes, ordinances,  
21 charter provisions, and rules of any governmental agency  
22 relating to planning, zoning, construction standards for



1 subdivisions, development and improvement of land, and  
2 construction of buildings thereon; provided that:

3 (1) The board finds the development is consistent with the  
4 public purpose and intent of this chapter, and meets  
5 minimum requirements of health and safety;

6 (2) The development of the proposed non-agricultural park  
7 land does not contravene any safety standards or  
8 tariffs approved by the public utilities commission  
9 for public utilities;

10 (3) The county in which the non-agricultural park land is  
11 to be situated shall have approved the non-  
12 agricultural park development; provided that:

13 (A) The county shall approve or disapprove the  
14 development within forty-five days after the  
15 department has submitted the preliminary plans  
16 and specifications for the development to the  
17 county. If after the forty-fifth day the  
18 development is not disapproved, it shall be  
19 deemed approved;

20 (B) No action shall be prosecuted or maintained  
21 against any county, its officials, or employees,  
22 on account of actions taken by them in reviewing,



1 approving, or disapproving the plans and  
2 specifications; and

3 (C) The final plans and specifications for the  
4 development shall be deemed approved by the  
5 county if the final plans and specifications do  
6 not substantially deviate from the preliminary  
7 plans and specifications. The final plans and  
8 specifications for the project shall constitute  
9 the planning, zoning, building, construction, and  
10 subdivision standards for that development. For  
11 purposes of sections 501-85 and 502-17, the  
12 chairperson of the board or the responsible  
13 county official may certify maps and plans of  
14 lands connected with the development as having  
15 complied with applicable laws and ordinances  
16 relating to consolidation and subdivision of  
17 lands, and such maps and plans shall be accepted  
18 for registration or recordation by the land court  
19 and registrar;

20 and

21 (4) The State shall assume the responsibility of  
22 maintaining all roads and infrastructure improvements



1           within the boundaries if the improvements are  
2           developed exempt from applicable county ordinances,  
3           charter provisions, and rules regarding development.

4           **§166E-D Lease negotiation.** (a) The department may  
5 negotiate and enter into leases with any person who:

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

12          (b) The lands eligible for lease negotiations under this  
13 section are limited to those lands that are:

- 14          (1) Zoned and used for agricultural purposes;
- 15          (2) Set aside by governor's executive order to the  
16          department for agricultural uses only; and
- 17          (3) Not needed by any state or county agency for any other  
18          public purpose.

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

1        (1) Require the appraisal of the parcel using standards of  
2        national appraiser organizations to determine the  
3        rental, including percentage rent;

4        (2) Require the payment of a premium, computed at twenty-  
5        five per cent of the annual lease rent, with the  
6        premium to be added to the annual lease rent for each  
7        year of the lease equal to the number of years the  
8        lessee has occupied the land, except that the premium  
9        period shall not exceed four years; and

10       (3) Recover from the lessee the costs of expenditures  
11       required by the department to convert the parcel into  
12       leasehold.

13       The department shall notify in writing those eligible for  
14       lease negotiations under this section and shall inform the  
15       applicants of the terms, conditions, and restrictions provided  
16       by this section. Any eligible person may apply for a lease by  
17       submitting to the department an application in writing within  
18       thirty days from the date of receipt of notification; provided  
19       further that the department may require documentary proof from  
20       any applicant to determine that the applicant meets eligibility  
21       and qualification requirements for a lease as specified by this  
22       section.



1        §166E-E Policy. Notwithstanding chapter 171, disposition  
2 of lands set aside for use pursuant to this chapter shall not be  
3 subject to the prior approval of the board of land and natural  
4 resources.

5        §166E-F Applicants. The board shall establish rules  
6 pursuant to chapter 91 for eligibility requirements of each  
7 disposition and the qualifications needed to be met by  
8 applicants.

9        §166E-G Rights of holders of security interests. (a) For  
10 the purposes of this section:

11        "Institutional lender" means a federal, state, or private  
12 lending institution licensed to do business in the state and  
13 that makes loans to qualified applicants under section 166E-F on  
14 the basis of a lease awarded pursuant to this chapter for  
15 security, in whole or in part, together with any other entity  
16 that acquires all or substantially all of an institutional  
17 lender's loan portfolio.

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

21        "Security interest" means any interest created or perfected  
22 by a mortgage, assignment by way of mortgage, or by a financing



1 statement and encumbering a lease, land demised by the lease, or  
2 personal property located at, affixed or to be affixed to, or  
3 growing or to be grown upon the demised land.

4 (b) Board action shall be required when an institutional  
5 lender acquires the lessee's interest through a foreclosure  
6 sale, judicial or nonjudicial, or by way of assignment in lieu  
7 of foreclosure, or when the institutional lender sells or causes  
8 the sale of the lessee's interest in a lease by way of a  
9 foreclosure sale, judicial or nonjudicial. The institutional  
10 lender shall convey a copy of the sale or assignment as recorded  
11 in the bureau of conveyances.

12 (c) Notwithstanding any provisions of this chapter, if any  
13 lease is subject to a security interest held by an institutional  
14 lender and if the institutional lender has given to the board a  
15 copy of such encumbrance as recorded in the bureau of  
16 conveyances, then:

17 (1) If the lease is canceled for violation of any non-  
18 monetary lease term or condition, or if the lease is  
19 deemed terminated or rejected under bankruptcy laws,  
20 the institutional lender shall be entitled to issuance  
21 of a new lease in its name for a term equal to the  
22 term of the lease remaining immediately prior to the



1 cancellation, termination, or rejection, with all  
2 terms and conditions being the same as in the  
3 canceled, terminated, or rejected lease, except only  
4 for such liens, claims, and encumbrances, if any, that  
5 were superior to the institutional lender prior to the  
6 cancellation, termination, or rejection. If a lease  
7 is rejected or deemed rejected under bankruptcy law,  
8 the lease shall be deemed to be canceled and  
9 terminated for all purposes under state law;

10 (2) If the lessee's interest under a lease is transferred  
11 to an institutional lender, including by reason of the  
12 provisions of paragraph (1), by reason of acquisition  
13 of the lessee's interest pursuant to a foreclosure  
14 sale, judicial or nonjudicial, and by reason of an  
15 assignment in lieu of foreclosure, then:

16 (A) The institutional lender shall be liable for the  
17 obligations of the lessee under the lease for the  
18 period of time during which the institutional  
19 lender is the holder of lessee's interest but  
20 shall not be liable for any obligations of the  
21 lessee arising after the institutional lender has  
22 assigned the lease; and



1           (B) The provisions of section 166E-A(a) (1) and (2)  
2           shall not apply to the lease or the demised land  
3           during such time the institutional lender holds  
4           the lease; provided that for non-monetary lease  
5           violations, the institutional lender shall first  
6           remedy the lease terms that caused the  
7           cancellation, termination, or rejection to the  
8           satisfaction of the board; provided further that  
9           the new lease issued to the institutional lender  
10          shall terminate one hundred twenty days from the  
11          effective date of issuance, when the  
12          institutional lender shall either sell or assign  
13          the lease, after which date the provisions of  
14          section 166E-A(a) shall become applicable to the  
15          new lease;

16          (3) As long as there is a delinquent loan balance secured  
17          by a security interest, the lease may not be canceled  
18          or terminated, except for cancellation by reason of  
19          default of the lessee, and no increase over and above  
20          the fair market rent, based upon the actual use of the  
21          land demised and subject to the use restrictions  
22          imposed by the lease and applicable laws, may be



1 imposed or become payable, and no lands may be  
2 withdrawn from the lease, except by eminent domain  
3 proceedings beyond the control of the board, except  
4 with prior written consent by the institutional lender  
5 and such consent shall not be unreasonably withheld;  
6 and

7 (4) If the lease contains any provision requiring the  
8 payment of a premium to the lessor on assignment of  
9 the lease, any premium shall be assessed only after  
10 all amounts owing by any debt secured by a security  
11 interest held by an institutional lender shall have  
12 been paid in full.

13 (d) Ownership of both the lease and the security interest  
14 by an institutional lender shall not effect or cause a merger  
15 thereof, and both interests shall remain distinct and in full  
16 force and effect unless the institutional lender elects in  
17 writing to merge said estates with the consent of the board.

18 (e) The board may include in any consent form or document  
19 such provisions not inconsistent with the intent of this section  
20 as may be required to make a lease mortgageable or more  
21 acceptable for mortgageability by an institutional lender.



1        (f) The rights of a purchaser or assignee or transferee of  
2 an institutional lender's security interest, including a junior  
3 lien holder, shall be exercisable by such purchaser, assignee,  
4 or transferee as successor in interest to the institutional  
5 lender; provided that such purchase, assignment, or transfer  
6 shall conform with subsection (c)(4); provided further that the  
7 purchase, assignment, or transfer of such rights shall be  
8 reserved for and exercisable only by an institutional lender.  
9 Other purchasers may not be precluded from acquiring the  
10 institutional lender's security interest but shall not have  
11 exercisable rights as successor in interest to the original  
12 institutional lender."

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

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

20        SECTION 3. In codifying the new sections added to chapter  
21 166E, Hawaii Revised Statutes, by section 1 of this Act, the  
22 revisor of statutes shall substitute appropriate section numbers



1 for the letters used in the designations of and references to  
2 those new sections.

3 SECTION 4. New statutory material is underscored.

4 SECTION 5. This Act shall take effect on July 1, 2096.



HB 2271  
HD1

**Report Title:**

Public lands; management

**Description:**

Allows the Board of Agriculture to manage, develop, and dispose of public lands set aside by a Governor's executive order to the Department of Agriculture. Expressly authorizes the DOA to manage non-agricultural park lands to the same extent it is authorized to manage agricultural parks under its control.

(HB2271 HD1)

