

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:

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 utilized in the production of crops or products for
6 which 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

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1 conditions as it may deem necessary, including but not
2 limited to restrictions against alienation and
3 provisions for withdrawal by the board;

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

20 (b) The violation of any provision in this section shall
21 be sufficient cause for the board, after due notice of breach or

1 default as provided in rules adopted by the board in conformance
2 with section 166E-6, to cancel the lease and take possession of
3 the land.

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

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

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

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1 relating to planning, zoning, construction standards for
2 subdivisions, development and improvement of land, and
3 construction of buildings thereon; provided that:

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

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

11 (3) The county in which the non-agricultural park land is
12 to be situated shall have approved the non-
13 agricultural park development.

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

21 (B) No action shall be prosecuted or maintained
22 against any county, its officials, or employees,

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1 on account of actions taken by them in reviewing,
2 approving, or disapproving the plans and
3 specifications.

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

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 to agriculture.

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

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.

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1 **§166E-E Policy.** Notwithstanding chapter 171, disposition
2 of lands set aside for use pursuant to chapter 166E 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 purpose 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 for security, in whole or in part, together
15 with any other entity who acquires all or substantially all of
16 an institutional lender's loan portfolio.

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

20 "Security interest" means any interest created or perfected
21 by a mortgage, assignment by way of mortgage, or by a financing
22 statement and encumbering a lease, land demised by the lease, or

1 personal property located at, affixed or to be affixed to, or
2 growing or to be grown upon the demised land.

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

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

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

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

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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, except that such purchase, assignment, or transfer shall
6 conform with subsection (c)(4) and, further, that the purchase,
7 assignment, or transfer of such rights shall be reserved for and
8 exercisable only by an institutional lender. Other purchasers
9 may not be precluded from acquiring the institutional lender's
10 security interest but cannot have exercisable rights as
11 successor in interest to the original institutional lender."

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

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

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

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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 upon its approval.

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INTRODUCED BY:

Calvin K. By
BY REQUEST

JAN 23 2006

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO
NON-AGRICULTURAL PARK LANDS.

PURPOSE: To amend chapter 166E, Hawaii Revised Statutes, to allow the Board of Agriculture to manage, develop, and dispose, as defined in this bill, of public lands set aside by a Governor's executive order to the Department of Agriculture without reverting back to chapter 171, Hawaii Revised Statutes.

MEANS: Add seven new sections to chapter 166E and amend section 166E-2, Hawaii Revised Statutes.

JUSTIFICATION: Chapter 166E was enacted in 2003. The purpose of this chapter was to transfer the management of certain agriculturally classified public lands from the Department of Land and Natural Resources (DLNR) to the Department of Agriculture (DOA). The DOA is currently in the process of implementing this program.

However, the chapter, as currently written, does not define the parameters of the DOA's powers to manage the non-agricultural park lands so transferred. These added sections expressly authorize the DOA to manage non-agricultural park lands to the same extent it is authorized to manage agricultural parks under its control, thereby eliminating any ambiguity or confusion over the management of either type of lands.

This bill allows the DOA to take action on leasing and other transactions involving transferred DLNR lands without having to obtain DLNR's approval; allows DOA to define new lease conditions, provided that the term shall be not less than 15 years or more than

65 years; allows the DOA to parcel the land into minimum size economic units, and set the upset price or lease rent and percentage rent based upon an appraised evaluation of the property; allows the department to enter into exclusive lease negotiations with persons who hold a revocable permit or formerly held an agricultural lease or a holdover lease which expired within the last ten years and continue to occupy the state land; requires the payment of a premium, computed at 25 percent of the annual lease rent for a maximum of four years or the number of years the lessee has occupied the land, whichever is less for persons eligible for exclusive lease negotiations; allows for the DOA to recover the costs to convert the parcel into leasehold; allows development of non-agricultural park lands to be exempt from statutes, ordinances, charter provisions, and rules relating to planning, zoning, and construction standards for subdivisions and development of land and buildings provided that minimum standards of health and safety are met, development does not contravene safety standards or tariffs approved by the PUC for public utilities, and the county in which the development is situated has approved the development. The State shall assume responsibility for maintaining roads and infrastructure improvements if the improvements have been developed exempt from applicable statutes, ordinances, charter provisions, and rules. The bill also allows for the protection of the security interest of financial institutions.

Impact on the public: This bill will provide clarification of the non-agricultural park program for farmers leasing public lands.

Impact on the department and other agencies: This bill will provide clarification and management flexibility to the DOA for the

agricultural leases that are transferred
from the DLNR to the DOA.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: 01 03 04
AGR 141.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.