

---

---

# 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 dispose of:  
6           (1) Public lands and related facilities set aside and  
7           designated for use pursuant to chapter 166E; and  
8           (2) Other lands and facilities under the jurisdiction of  
9           the department pursuant to section 166E-B and  
10           notwithstanding chapter 171,  
11 by negotiation, drawing of lot, or public auction.  
12           Except as provided by subsection (d), the department may  
13 also dispose of public lands by lease.  
14           (b) In all dispositions, the department shall be subject  
15 to the requirements set forth in rules adopted by the board  
16 consistent with section 166E-6 and subject to the following:  
17           (1) All land and facilities shall be disposed of for  
18           agricultural or aquacultural purposes only;



- 1        (2) Each lessee shall derive a major portion of the  
2        lessee's total annual income earned from the lessee's  
3        activities on the premises; provided that this  
4        restriction shall not apply if failure to meet the  
5        restriction results from mental or physical disability  
6        or the loss of a spouse, or if the premises are fully  
7        used in the production of crops or products for which  
8        the disposition was granted;
- 9        (3) The lessee shall comply with all federal and state  
10       laws regarding environmental quality control;
- 11       (4) The board shall:
  - 12       (A) Determine the specific uses for which the  
13       disposition is intended;
  - 14       (B) Parcel the land into minimum size economic units  
15       sufficient for the intended uses;
  - 16       (C) Make, or require the lessee to make, improvements  
17       that are required to achieve the intended uses;
  - 18       (D) Set the upset price or lease rent based upon an  
19       appraised evaluation of the property value  
20       adjustable as provided in rules adopted in  
21       accordance with chapter 91 to the specified use  
22       of the lot;

1           (E) Set the term of the lease, which shall be not  
2           less than fifteen years nor more than sixty-five  
3           years, including any extension granted for  
4           mortgage lending or guarantee purposes; and

5           (F) Establish other terms and conditions it deems  
6           necessary, including but not limited to  
7           restrictions against alienation and provisions  
8           for withdrawal by the board; and

9           (5) Any transferee, assignee, or sublessee of a non-  
10           agricultural park lease shall first qualify as an  
11           applicant under this chapter. For the purpose of this  
12           paragraph, any transfer, assignment, sale, or other  
13           disposition of any interest, excluding a security  
14           interest, by any legal entity that holds a non-  
15           agricultural park lease shall be treated as a transfer  
16           of the non-agricultural park lease and shall be  
17           subject to the approval of the board and to reasonable  
18           terms and conditions, consistent with this chapter or  
19           rules of the board, which the board may deem  
20           necessary. No transfer shall be approved by the board  
21           if the disposition of the stock or assets or other  
22           interest of the legal entity would result in the



1           failure of the entity to qualify for a non-  
2           agricultural park land lease.

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

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

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

20           §166E-C Non-agricultural park land development. On behalf  
21           of the State or in partnership with a federal agency, a county,  
22           or a private party and except as herein provided, the department

1 may develop non-agricultural park lands that, at the option of  
2 the board, may be exempt from all statutes, ordinances, charter  
3 provisions, and rules of any governmental agency relating to  
4 planning, zoning, construction standards for subdivisions,  
5 development and improvement of land, and construction of  
6 buildings thereon; provided that:

7       (1) The board finds the development is consistent with the  
8       public purpose and intent of this chapter and meets  
9       minimum health and safety requirements;

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

14       (3) The county in which the non-agricultural park land is  
15       proposed shall approve the non-agricultural park  
16       development; and provided further that:

17       (A) The county shall approve or disapprove the  
18       development within forty-five days after the  
19       department submits preliminary plans and  
20       specifications for the development to the county.  
21       If the county does not disapprove the development

1           after the forty-fifth day, the development shall  
2           be deemed approved;

3           (B) No action shall be prosecuted or maintained  
4           against any county, its officials, or employees,  
5           on any actions taken by them in reviewing,  
6           approving, or disapproving the plans and  
7           specifications; and

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

1                   for registration or recordation by the land court  
2                   and registrar; and

3       (4) The State shall assume the responsibility of  
4           maintaining all roads and infrastructure improvements  
5           within the boundaries if the improvements are  
6           developed exempt from applicable county ordinances,  
7           charter provisions, and rules regarding development.

8       **§166E-D Lease negotiation.** (a) The department may  
9 negotiate and enter into leases with any person who:

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

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

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

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

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

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

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

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



1 determine that the applicant meets eligibility and qualification  
2 requirements for a lease.

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

7 **§166E-F Applicants.** The board shall establish rules  
8 pursuant to chapter 91 for eligibility requirements of each  
9 disposition and applicant qualifications.

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

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

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



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

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

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

19       (1) If the lease is canceled for violation of any non-  
20 monetary lease term or condition, or if the lease is  
21 deemed terminated or rejected under bankruptcy laws,  
22 the institutional lender shall be entitled to issuance



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

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

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

1           lessee arising after the institutional lender has  
2           assigned the lease; and

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

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



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

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

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

20 (e) The board may include in any consent form or document  
21 the provisions consistent with the intent of this section as may



1 be required to make a lease mortgageable or more acceptable for  
2 mortgageability by an institutional lender.

3 (f) The rights of a purchaser, assignee, or transferee of  
4 an institutional lender's security interest, including a junior  
5 lien holder, shall be exercisable by the purchaser, assignee, or  
6 transferee as successor in interest to the institutional lender;  
7 provided that the purchase, assignment, or transfer shall  
8 conform with subsection (c) (4); provided further that the  
9 purchase, assignment, or transfer of such rights shall be  
10 reserved for and exercisable only by an institutional lender.

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

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

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

1           SECTION 3. In codifying the new sections added to chapter  
2 166E, Hawaii Revised Statutes, by section 1 of this Act, the  
3 revisor of statutes shall substitute appropriate section numbers  
4 for the letters used in the designations of and references to  
5 those new sections.

6           SECTION 4. New statutory material is underscored.

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



**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.  
(SD1)

