
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 this chapter; 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 conversion, or public auction.

12 Except as provided by subsection (d), the department shall
13 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:
- 5 (A) Failure to meet the restriction results from
- 6 mental or physical disability or the loss of a
- 7 spouse; or
- 8 (B) The premises are fully used in the production of
- 9 crops or products for which the disposition was
- 10 granted;
- 11 (3) The lessee shall comply with all federal and state
- 12 laws regarding environmental quality control;
- 13 (4) The board shall:
- 14 (A) Determine the specific uses for which the
- 15 disposition is intended;
- 16 (B) Parcel the land into minimum size economic units
- 17 sufficient for the intended uses;
- 18 (C) Make, or require the lessee to make, improvements
- 19 that are required to achieve the intended uses;
- 20 (D) Set the upset price or lease rent based upon an
- 21 appraised evaluation of the property value,
- 22 adjustable to the specified use of the lot;

1 (E) Set the term of the lease that shall be not less
2 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 that the board may deem necessary.
20 No transfer shall be approved by the board if the
21 disposition of the stock or assets or other interest
22 of the legal entity would result in the failure of the



1 entity to qualify for a non-agricultural park land
2 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; other
16 lands with the approval of the board that may be subject to a
17 joint venture partnership agreement pursuant to section 166E-C;
18 and 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 provided in this section, the

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

18 (A) The county shall approve or disapprove the
19 development within forty-five days after the
20 department submits preliminary plans and
21 specifications for the development to the county.
22 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 the 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 of public land that expired within the last ten
13 years and has continued to occupy the 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 Rights of holders of security interests.** (a) For
8 the purposes of this section:

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

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

19 "Security interest" means any interest created or perfected
20 by a mortgage, assignment by way of mortgage, or by a financing
21 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) Prior board action shall be required when an
4 institutional lender acquires the lessee's interest through a
5 foreclosure sale, judicial or nonjudicial, or by way of
6 assignment in lieu of foreclosure, or when the institutional
7 lender sells or causes the sale of the lessee's interest in a
8 lease by way of a foreclosure sale, judicial or nonjudicial.
9 The institutional lender shall convey a copy of the sale or
10 assignment as recorded in the bureau of conveyances.

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

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 the institutional lender shall be entitled to issuance
20 of a new lease in its name for a term equal to the
21 term of the lease remaining immediately prior to the
22 cancellation, termination, or rejection, with all

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

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

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



1 (B) The provisions of section 166E-A(b)(1) and (2)
2 shall not apply to the lease or the demised land
3 during such time as the institutional lender
4 holds the lease; provided that:

5 (i) For non-monetary lease violations, the
6 institutional lender shall first remedy the
7 lease terms that caused the cancellation,
8 termination, or rejection to the
9 satisfaction of the board; and

10 (ii) The new lease issued to the institutional
11 lender shall terminate one hundred twenty
12 days from the effective date of issuance,
13 when the institutional lender shall either
14 sell or assign the lease,
15 after which date section 166E-A(b)(1) and (2)
16 shall apply to the new lease;

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



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

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

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

19 (e) The board may include in any consent form or document
20 the provisions consistent with the intent of this section as may
21 be required to make a lease mortgageable or more acceptable for
22 mortgageability by an institutional lender.



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

6 (1) The purchase, assignment, or transfer shall conform
7 with subsection (c) (4); and

8 (2) The purchase, assignment, or transfer of such rights
9 shall be reserved for and exercisable only by an
10 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. Section 166E-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§166E-6[+] **Rules.** The board shall adopt rules
4 pursuant to chapter 91, including eligibility requirements of
5 each disposition and applicant qualifications, to effectuate the
6 purposes of this chapter."

7 SECTION 4. In codifying the new sections added to chapter
8 166E, Hawaii Revised Statutes, by section 1 of this Act, the
9 revisor of statutes shall substitute appropriate section numbers
10 for the letters used in the designations of and references to
11 those new sections.

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

14 SECTION 6. This Act shall take effect on July 1, 2050.



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.
(SD2)

