

# H.B. NO. 1222

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## A BILL FOR AN ACT

RELATING TO LOANS FOR AGRICULTURAL AND AQUACULTURE PURPOSES.

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

1           SECTION 1. Section 155-14, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) There is created a special fund to be known as the  
4 agricultural loan revolving fund, from which moneys shall be  
5 loaned by the department of agriculture under this chapter[-]  
6 and chapter 219. [~~The department, by its board of agriculture,~~  
7 ~~may transfer moneys from the agricultural loan revolving fund to~~  
8 ~~the aquaculture loan revolving fund, from which moneys shall be~~  
9 ~~disbursed by the department pursuant to chapter 219, and may~~  
10 ~~transfer moneys from that revolving fund to the agricultural~~  
11 ~~loan revolving fund for disbursement pursuant to this chapter,~~  
12 ~~provided that:~~

13           ~~(1) The amount of moneys transferred shall not exceed~~  
14           ~~\$1,000,000 for each revolving fund within the calendar~~  
15           ~~year; and~~

16           ~~(2) Twenty days prior to the convening of each regular~~  
17           ~~session of the legislature, the department shall~~  
18           ~~report to the legislature all transfers that were made~~

1           ~~between the agricultural loan revolving fund and the~~  
2           ~~aquaculture loan revolving fund during the preceding~~  
3           ~~calendar year and the balance of each revolving fund~~  
4           ~~as of December 31 of each year.]"~~

5           SECTION 2. Section 219-2, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "**§219-2 Definitions.** As used in this chapter:

8           "Aquaculture" means the propagation, cultivation, or farming  
9 of aquatic plants and animals in controlled or selected  
10 environments for commercial purposes, or authorized stock  
11 enhancement purposes.

12           "Board" means the board of agriculture of the department of  
13 agriculture.

14           "Chairperson" means the chairperson of the board of  
15 agriculture.

16           "Cooperative" means a nonprofit association of  
17 [+]aquaculturalists[+] organized under chapter 421.

18           "Department" means the department of agriculture.

19           "New aquaculturist program" means a new aquaculture loan  
20 program for qualified new aquaculturists, including persons or  
21 associations of persons who are:

1        (1) Displaced from employment in an aquaculture production  
2                    enterprise;

3        (2) Persons by reason of experience, training, or  
4                    education who are likely to successfully operate an  
5                    aquaculture enterprise; or

6        (3) Persons or associations of persons actively engaged in  
7                    a new aquaculture operation for less than two years.

8        "Private lender" includes banks, savings and loan  
9        associations, credit unions, mortgage companies, and other  
10       qualified companies whose business includes the making of loans  
11       in the State.

12       "Qualified aquaculturalist" means a person, or association of  
13       persons, actively engaged in aquaculture farming, aquacultural  
14       produce processing, or aquacultural product development  
15       activities[-] for a minimum of two years."

16       SECTION 3. Section 219-4, Hawaii Revised Statutes, is  
17       amended to read as follows:

18       **"§219-4 Funds; application of payments.** (a) [~~There is~~  
19       ~~established a special fund to be known as the aquaculture loan~~  
20       ~~revolving fund from which moneys shall be loaned by the~~  
21       ~~department of agriculture under this chapter. The department,~~  
22       ~~by its board of agriculture, may transfer moneys from the~~

1 ~~aquaculture loan revolving fund to the agricultural loan~~  
2 ~~revolving fund, from which moneys shall be disbursed by the~~  
3 ~~department pursuant to chapter 155, and may transfer moneys from~~  
4 ~~that revolving fund to the aquaculture loan revolving fund for~~  
5 ~~disbursement pursuant to this chapter; provided that:~~

6 ~~(1) The amount of moneys transferred shall not exceed~~  
7 ~~\$1,000,000 for each revolving fund within the calendar~~  
8 ~~year; and~~

9 ~~(2) Twenty days prior to the convening of each regular~~  
10 ~~session of the legislature, the department shall~~  
11 ~~report to the legislature all transfers that were made~~  
12 ~~between the aquaculture loan revolving fund and the~~  
13 ~~agricultural loan revolving fund during the preceding~~  
14 ~~calendar year and the balance of each revolving fund~~  
15 ~~as of December 31 of each year.] Loans approved by~~

16 the department under this chapter and chapter 155 will be funded  
17 from the agricultural loan revolving fund.

18 (b) All interests and fees collected by the department  
19 shall be deposited in [a] the agricultural loan reserve fund to  
20 the extent needed to carry on the operations of [~~this program;~~  
21 ~~any moneys surplus to these needs shall be transferred to the~~  
22 ~~aquaculture loan revolving fund at the discretion of the~~

1 ~~department.]~~ the programs. All payments received on account of  
2 principal shall be [~~credited to~~] paid into the agricultural loan  
3 revolving fund."

4 SECTION 4. Section 219-5, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) The department shall have the necessary powers to  
7 carry out the purposes of this chapter, including the following:

8 (1) Prescribe the qualifications for eligibility of  
9 applicants for loans;

10 (2) Establish preferences and priorities in determining  
11 eligibility for loans and loan repayment requirements;

12 (3) Establish the conditions, consistent with the purpose  
13 of this chapter, for the granting or for the  
14 continuance of a grant of a loan;

15 (4) Provide for inspection at reasonable hours of the  
16 plant facilities, books, and records of an enterprise  
17 that has applied for or has been granted a loan and  
18 require the submission of progress and final reports;

19 (5) Make loans for aquacultural products development, such  
20 as financing of plant construction, conversion,  
21 expansion, the acquisition of land for expansion, the  
22 acquisition of equipment, machinery, supplies, or

- 1 materials or for the supplying of working capital,  
2 consistent with section 219-6;
- 3 (6) Secure loans by duly recorded first mortgages upon the  
4 following property within the State:
- 5 (A) Fee simple farm land;
- 6 (B) Leaseholds of farm land where the lease has an  
7 unexpired term at least two years longer than the  
8 term of the loan;
- 9 (C) Aquaculture products;
- 10 (D) Other chattels;
- 11 (E) A second mortgage when any prior mortgage does  
12 not contain provisions that might jeopardize the  
13 security position of the department or the  
14 borrower's ability to repay; and
- 15 (F) Written agreements, such as assignments of  
16 income;
- 17 (7) Administer the Hawaii [~~aquaculture~~] agricultural loan  
18 revolving fund and deposit into the fund all moneys  
19 received on account of principal;
- 20 (8) Include in its budget for subsequent fiscal periods  
21 amounts necessary to effectuate the purposes of this  
22 chapter;

- 1 (9) Insure loans made to qualified aquaculturists by  
2 private lenders under sections 219-7 and 219-8;  
3 provided that at no time shall the aggregate amount of  
4 the State's liability, contingent or otherwise, on  
5 these loans exceed \$1,000,000;
- 6 (10) Participate in loans made to qualified aquaculturalists  
7 by private lenders under section 219-8;
- 8 (11) Make direct loans to qualified aquaculturalists as  
9 provided under section 219-9;
- 10 (12) Establish interest rates chargeable by the State for  
11 direct loans and by private lenders for insured and  
12 participation loans; and
- 13 (13) Maintain a proper reserve in the [~~aquaculture~~  
14 agricultural loan revolving fund to guarantee payment  
15 of loans insured under sections 219-7 and 219-8."

16 SECTION 5. Section 219-6, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§219-6 Loan; limitation and terms.** Loans made under this  
19 chapter shall be for the purposes and in accordance with the  
20 terms specified in classes "A", "B", "C", [~~and~~] "D", and "E" in  
21 [~~paragraph~~] paragraphs (1), (2), (3), [~~and~~] (4), and (5)

1 following and shall be made only to applicants who meet the  
2 eligibility requirements specified therein:

3 (1) Class A: Aquaculture farm ownership and improvement  
4 loans. To provide for:

5 (A) The purchase or improvement of aquaculture farm  
6 land and waters;

7 (B) The purchase, construction, or improvement of  
8 adequate aquaculture farm dwellings, and other  
9 essential aquaculture farm facilities; and

10 (C) The liquidation of indebtedness incurred for any  
11 of the foregoing purposes.

12 Such loans shall be for an amount not to exceed  
13 [~~\$400,000~~] \$800,000 and for a term not to exceed forty  
14 years. To be eligible the applicant shall:

15 (i) Derive, or present an acceptable plan to  
16 derive, a major portion of the applicant's  
17 income from and devote, or intend to devote,  
18 most of the applicant's time to aquaculture  
19 farming operations; and

20 (ii) Have or be able to obtain the operating  
21 capital, including fishstock and equipment,

1                                   needed to successfully operate the  
2                                   applicant's aquaculture farm;

3       (2) Class B: Aquaculture operating loans. To carry on  
4       and improve an aquaculture operation, including:

5                   (A) The purchase of aquaculture equipment and  
6                   fishstock;

7                   (B) The payment of production and marketing expenses  
8                   including materials, labor, and services;

9                   (C) The payment of living expenses; and

10                  (D) The liquidation of indebtedness incurred for any  
11                  of the foregoing purposes.

12                  Such loans shall be for an amount not to exceed  
13                  [~~\$400,000~~] \$800,000 and for a term not to exceed ten  
14                  years. To be eligible, an applicant shall derive or  
15                  present an acceptable plan to derive a major portion  
16                  of the applicant's income from and devote, or intend to  
17                  devote, most of the applicant's time to aquaculture  
18                  operations;

19       (3) Class C: Aquaculture cooperative and corporation  
20       loans. To provide credit to aquaculturalists'  
21       cooperative associations and corporations engaged in

1 marketing, purchasing, and processing, and providing  
2 farm business services, including:

3 (A) Facility loans to purchase or improve land,  
4 building, and equipment for an amount not to  
5 exceed \$500,000 and a term not to exceed twenty  
6 years; and

7 (B) Operating loans to finance inventories of  
8 supplies, warehousing, and shipping commodities,  
9 extension of consumer credit to justified farmer-  
10 members, and other normal operating expenses for  
11 an amount not to exceed \$300,000 and a term not  
12 to exceed seven years.

13 To be eligible, a cooperative or corporation shall  
14 have at least seventy-five per cent of its board of  
15 directors and seventy-five per cent of its membership  
16 as shareholders who meet the eligibility requirements  
17 prescribed by the board and who devote most of their  
18 time to aquaculture operations; and

19 (4) Class D: Emergency loans. To provide relief and  
20 rehabilitation to qualified aquaculturists without  
21 limit as to purpose:

- 1 (A) In areas stricken by extraordinary rainstorms,  
2 windstorms, droughts, tidal waves, earthquakes,  
3 volcanic eruptions, and other natural  
4 catastrophes;
- 5 (B) On farms stricken by aquatic diseases;
- 6 (C) On farms seriously affected by prolonged shipping  
7 and dock strikes;
- 8 (D) During economic emergencies such as those caused  
9 by overproduction and excessive imports; and
- 10 (E) During other emergencies as determined by the  
11 board.

12 The maximum amounts and period for the loans shall be  
13 determined by the board; provided that the board shall  
14 require that any settlement or moneys received by  
15 qualified aquaculturists as a result of an emergency  
16 declared under this section shall be first applied to  
17 the repayment of an emergency loan made under this  
18 chapter.

19 (5) Class E: Loans for new aquaculturists shall provide  
20 for costs of a new aquaculture enterprise for  
21 qualified new aquaculturists:

1           (A) Initial loans made under this class shall be for  
2           purposes and in accordance with the terms  
3           specified in class "A" or B" only. The loans shall  
4           be made for an amount not to exceed \$100,000 or  
5           eighty-five per cent of the cost of the project,  
6           whichever is less;

7           (B) Any subsequent loan shall be made from class "A",  
8           "B", or "D", respectively, depending on the purpose  
9           for which the loan funds are used; and

10          (C) Borrowers shall comply with special term loan  
11          agreements as may be required by the department  
12          and shall take special training courses as the  
13          department deems necessary."

14          SECTION 6. Section 219-9, Hawaii Revised Statutes, is  
15          amended by amending subsection (a) to read as follows:

16          "(a) The department of agriculture may make loans directly  
17          to qualified aquaculturists who are unable to obtain sufficient  
18          funds at reasonable rates from private lenders either  
19          independently or under section 219-7 or 219-8. Loans made under  
20          this section shall be authorized only if loans cannot be  
21          obtained from [~~the relevant farm credit lender and~~] two [~~other~~]  
22          private lenders[~~+~~], which may include any of the following:

- 1        (1) Private lenders;  
2        (2) Members of the farm credit system; or  
3        (3) The United States Department of Agriculture; provided  
4                that the board of agriculture may waive this  
5                requirement for emergency loans."

6            SECTION 7. On July 1, 2007, the director of finance shall  
7 transfer all unexpended and unencumbered balances remaining in  
8 the aquaculture loan revolving fund as of June 30, 2007 to the  
9 credit of the agricultural loan revolving fund established by  
10 section 155-14, Hawaii Revised Statutes.

11           SECTION 8. On July 1, 2007, the director of finance shall  
12 transfer all unexpended and unencumbered balances remaining in  
13 the aquaculture loan reserve fund as of June 30, 2007, to the  
14 credit of the agricultural loan revolving fund established by  
15 section 155-14, Hawaii Revised Statutes.

16           SECTION 9. The director of finance shall increase the  
17 budget expenditure ceiling of the agricultural loan revolving  
18 fund by the amount of the budget expenditure ceiling of the  
19 aquaculture loan revolving fund; however, in no event shall the  
20 increase be more than the current combined budget expenditure  
21 ceiling for both funds.

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1 SECTION 10. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect on July 1, 2007.

4  
5 INTRODUCED BY: Calvin H. Boy  
6

BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO LOANS FOR AGRICULTURAL AND AQUACULTURE PURPOSES.

PURPOSE: The purpose of this bill is to make the aquaculture loan program similar to the agriculture loan program and to combine the revolving and reserve funds to provide flexibility in funding. The bill:

- (1) Increases aquaculture loan limits for Class A and B loans to agriculture loan limits of \$800,000 to keep pace with the burgeoning aquaculture industry;
- (2) Makes credit denial requirements identical to the agricultural loan program by eliminating one loan denial;
- (3) Creates a "new aquaculturist program" similar to the "new farmer program" to allow new aquaculture operations to apply for loans under the aquaculture program; and
- (4) Transfers and incorporates aquaculture funds into the agriculture funds and combines the aquaculture fund expenditure ceiling with the agriculture fund expenditure ceiling. The overall expenditure ceiling will not be expanded at this time. Unexpended and unencumbered balances in the aquaculture funds shall be transferred to the agricultural revolving fund and the agricultural reserve fund. Aquaculture loans and administrative/operating expenses will then be funded out of the agricultural loan revolving and the agricultural loan reserve funds.

MEANS: Amend sections 155-14, 219-2, 219-4, 219-5, 219-6, and 219-9, Hawaii Revised Statutes (HRS).

## JUSTIFICATION:

This proposal will help to create parity between the aquaculture loan program and the agriculture loan program and provide greater flexibility in funding the programs. The aquaculture industry in Hawaii from 2000 to 2004 grew approximately \$6 million from \$22.17 to \$28.1 million. Aquaculture operations range from small scale ornamental fish operations which may be done on a part-time basis to open ocean cage culture which is very capital intensive.

The "new aquaculturist program" is intended to help establish new aquaculture operations thereby expanding the State's economy. The program currently can only fund on-going established aquaculture operations.

The increase in loan limits will help to provide funding to larger scale operations at a level similar to the agricultural loan program.

The elimination of the requirement for a third credit denial will make the credit denial requirement identical to that of the agriculture loan program and make it less burdensome for the applicant. The Agricultural Loan Division has found with the agricultural loan program that two lender turndowns are sufficient to ensure that the program does not compete with private lenders as it is very unlikely that a third lender would agree to fund the loan that had been denied by two lenders.

Eliminating the aquaculture revolving and reserve funds, transferring the balances to the agriculture revolving and reserve funds, and combining the expenditure ceiling of both programs provides greater efficiency and flexibility in funding loans. It will allow the department to properly fund both aquaculture and agriculture loans in a timelier manner without the need to increase the expenditure ceilings for each fund or

transferring moneys between funds. Having separate funds does not serve any significant purpose and instead increases the administrative burden of monitoring separate funds and ceilings.

Impact on the public: The creation of the "new aquaculturist loan program" will encourage development of new aquaculture operations and increasing limits will help expand existing aquaculture operations. The use of one revolving and one reserve fund will assist the agricultural and aquacultural industries by giving the department greater flexibility in funding loans without requiring more state funding. These industries make available fresh, locally grown seafood to the general public. They also diversify the State's economy and provide employment opportunities, bring in out-of-state revenues through exports and spend capital in the local economy.

Impact on the department and other agencies: The expansion of the aquaculture program may create greater demand for aquaculture loans. The use of a single fund for both agriculture and aquaculture loans will create greater efficiency by eliminating the need to transfer moneys between the funds, eliminating monitoring of two funds, as well as eliminating the paperwork associated with the aquaculture funds. No impact is anticipated for other agencies.

GENERAL FUND: None required.

OTHER FUNDS: None required.

PPBS PROGRAM  
DESIGNATION: AGR-101, AGR-102.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2007.