

JAN 21 2011

S.B. NO. 687

A BILL FOR AN ACT

RELATING TO PUBLIC LAND.

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

1 SECTION 1. Chapter 171, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . STATE AGRICULTURAL LEASES WITHOUT PUBLIC AUCTION

5 -1 State agricultural leases without public auction.

6 In addition to the lease requirements set forth in chapter 171,
7 part III, the department shall enter into enter into leases with
8 qualified farmers, as defined under section 155-1, for public
9 lands to be used exclusively for agricultural activities,
10 pursuant the procedures set forth in this part. The department
11 shall exercise incidental powers as are deemed necessary or
12 requisite to fulfill its duty in carrying out the purposes of
13 this part.

14 -2 Lessee qualifications. To be eligible for leases
15 under this part, an applicant shall meet the requirements of
16 section 171-68 and shall be:

17 (1) A qualified farmer as defined under section 155-1;



- 1 (2) A citizen of the United States who has resided in the
- 2 State for at least three years, or any permanent
- 3 resident alien who has resided in the State for at
- 4 least three years;
- 5 (3) A sound credit risk with the ability to fulfill the
- 6 lease terms; and
- 7 (4) Willing to carry out recommended farm management
- 8 practices.

9 **-3 Lease application procedures.** (a) Any qualified
10 farmer desiring to lease public land shall submit to the
11 department a lease application. Lease applications made
12 pursuant to this part shall contain:

- 13 (1) A description of the location and boundaries of the
- 14 public land to be leased and a description of the
- 15 nature of the use desired;
- 16 (2) A statement of the reasons for selecting the proposed
- 17 location;
- 18 (3) A description of the agricultural activities to be
- 19 conducted, including a timetable for farming
- 20 activities on the property;
- 21 (4) A description of the plants to be cultivated and
- 22 produced and any animals that will occupy the land;



1 (5) A statement on the extent to which the proposed
2 activities will interfere with the use of the public
3 land for purposes other than farming after the lease
4 expires;

5 (6) A description of any enclosure, fences, stakes, or
6 monuments proposed to mark off the leased property;
7 and

8 (7) Other information that the department determines to be
9 necessary or appropriate, including financial and
10 technical information.

11 (b) Within sixty days after the submission of a completed
12 lease application, the department shall issue a public notice
13 that the lease application has been received. The public notice
14 shall describe:

15 (1) The public land for which the lease application has
16 been made;

17 (2) The nature of the use sought; and

18 (3) The purpose for which the lease application has been
19 made.

20 The notice shall be given on three separate days statewide and
21 in the county nearest the public land for which application has
22 been made. The public notice shall invite public comment.



1 (c) Notices of hearings shall be provided and hearings
2 shall be conducted in accordance with department rules regarding
3 lease applications. If the area described in the lease
4 application adjoins any private property or adjoins or overlaps,
5 above or below, any leased public land, or if the proposed
6 activity will affect the property or property rights of private
7 property owners or lessees of public land, the department shall
8 also notify the owners or lessees of the adjoining, overlapping,
9 or affected property. Notice shall be given in writing, by
10 personal service or by registered or certified mail, and shall
11 describe:

- 12 (1) The public land for which application has been made;
13 (2) The nature of the use sought; and
14 (3) The purpose for which the lease application has been
15 made.

16 (d) The department shall consider in its evaluation of
17 each lease application:

- 18 (1) The extent to which the proposed agricultural activity
19 may have a significant adverse effect upon any
20 existing private industry or public activity;



1 (2) Whether the proposed agricultural activity may have an
2 adverse or permanent effect upon the wildlife, aquatic
3 life, or environment of the surrounding area; and

4 (3) Other potential uses of the area, including competing
5 uses, which may be in the public interest.

6 (e) The department shall not approve a lease application
7 unless it finds that:

8 (1) The applicant has the capacity to carry out the
9 proposed agricultural activity; and

10 (2) The proposed agricultural activity is clearly in the
11 public interest upon consideration of the overall
12 economic, social, and environmental impacts.

13 **-4 Lease terms and conditions.** (a) Upon approval of
14 the lease application, the department may negotiate with and
15 grant a lease to the applicant. Leases issued by the department
16 shall be drawn up in accordance with the following requirements,
17 in addition to any other applicable requirements provided in
18 chapter 171, part III, and section 171-36, or as otherwise
19 determined by the department:

20 (1) Each lease shall specify the term of the lease and the
21 nature of the exclusive use of the area being granted;



- 1 (2) Each lease shall specify the plants or animals which
2 may be cultivated, produced, harvested, raised,
3 removed, or used pursuant to the lease;
- 4 (3) Each lease shall specify an annual rent set by the
5 department for the leased area;
- 6 (4) Leases may specify that failure of the lessee to
7 perform substantially the agricultural activity or
8 activities for which the lease was granted shall
9 constitute grounds for revocation of the lease and
10 forfeiture to the State of all structures and all
11 plants or animals cultivated in and upon the leased
12 area;
- 13 (5) Each lease shall require that the lessee execute a
14 bond conditioned upon the substantial performance of
15 the agricultural activity or activities described in
16 the lease. The amount of the bond so executed shall
17 be appropriate to the size, scale, and risk of the
18 agricultural activity for which the lease is granted
19 and shall be sufficient to protect the public interest
20 in the removal of all structures, plants, or animals
21 cultivated, as well as to restore or remediate the
22 public lands to the satisfaction of the department;

- 1 (6) Each lease shall specify that if a lessee abandons a
2 leased area, the department may order the removal or
3 sale at public auction of all improvements, assets,
4 plants or animals, and equipment remaining in and upon
5 the leased area, and shall transmit to the state
6 general fund the entire amount received from any
7 public auction and any proceeds received from the
8 lessee's performance bond. Alternatively, the
9 department may permit the use of the improvements,
10 assets, plants or animals, and equipment for purposes
11 that benefit the general public;
- 12 (7) Each lease shall specify that the plants or animals
13 described in the lease to be cultivated or raised and
14 contained within the leased area are the exclusive
15 harvest of the lessee; provided that any plant or
16 animal that escapes from the leased area and is not
17 clearly identifiable as the property of the lessee
18 shall become common property and may be taken or
19 caught by any person, subject to the laws of the
20 State, without violating the rights of the lessee;
- 21 (8) Each lease shall specify that:



1 (A) The lessee is responsible for the removal of any
2 cultivated plants or animals found outside the
3 leased area but within public land if removal is
4 required to protect the environment or public
5 health and safety, and removal is demanded by the
6 department;

7 (B) The lessee is solely responsible for all costs of
8 removal of such plants or animals; and

9 (C) If action must be taken by the department to
10 eradicate escaped plants or animals, all costs of
11 eradication shall be borne by the lessee;

12 (9) Leases may specify that the lessee shall construct and
13 maintain gates, openings, or lanes at reasonable
14 distances from one another throughout a leased area;

15 (10) Leases may require, where necessary, that:

16 (A) All lessees mark off the areas under lease by
17 appropriate ranges, monuments, stakes, fences, or
18 any other devices;

19 (B) All lessees identify the area under lease and the
20 names of the lessees on signs appropriately
21 placed pursuant to specifications established by
22 the department; and



1 (C) All limitations upon the use by the public of the
2 area under lease shall be clearly posted by the
3 lessee pursuant to specifications established by
4 the department;

5 (11) Leases shall specify that if the department finds or
6 has reasonable cause to believe that an activity
7 conducted by the lessee in or upon the area described
8 in the lease is causing an immediate danger to human,
9 animal, or marine life or the environment of the
10 State, the department may direct a temporary or
11 permanent suspension of the agricultural activity
12 activities in the affected area. The department shall
13 immediately order the lessee or lessees affected by
14 the suspension to show cause as to why their
15 activities should not be terminated or why any
16 structures, cultivated plants or animals, or equipment
17 should not be removed from the affected area. The
18 department shall proceed to hold a public hearing and
19 issue its order with respect to that hearing within a
20 reasonable period. In its order following such
21 hearing, the department may direct a temporary or
22 permanent suspension of agricultural activities in the



1 affected area, removal of equipment, plants, or
2 animals, or other measures as may be deemed necessary
3 for the protection of human, animal, or marine life
4 and the environment of State, including forfeiture to
5 and destruction by the State of any plant or animal
6 species;

7 (12) Each lease shall specify that the lease may be
8 assigned in whole, in part, or as amended, only if the
9 department determines that such assignment or
10 amendment is in the public interest and meets the
11 provisions of this part and consents to the
12 assignments;

13 (13) Each lease shall specify that the lease may be revoked
14 by the department for violation of any lease
15 provision. The department shall deliver a written
16 notice of the breach or default of any lease agreement
17 by registered or certified mail to the party in
18 default and to each holder of record having any
19 security interest in the public land covered by or
20 subject to the lease, making demand upon the party to
21 cure or remedy the breach or default within sixty days
22 from the date of receipt of the notice. Upon failure



1 of the party to cure or remedy the breach or default
2 within sixty days from the date of receipt of the
3 notice, or within such additional period the
4 department may allow for good cause, the department
5 may revoke the lease; and

6 (14) Each lease shall contain a statement describing the
7 degree of exclusivity or access to the site by the
8 public, which shall be based on an analysis of the
9 user listing and descriptions provided in the
10 application, and comments made by the public and in
11 consideration of but not limited to compatibility of
12 the operation with existing uses, perceived liability
13 to the lessee and the public, and perceived risk to
14 the lessee's investment.

15 (b) The department or its authorized agents shall have the
16 authority to enter and inspect any and all areas leased by the
17 department for the purpose of determining compliance with the
18 terms and provisions of any lease.

19 (c) The department shall not revoke or modify its approval
20 of a lease application in such a way as to invalidate, impair,
21 limit, or affect, directly or indirectly, in whole or in part,



1 the rights of a lessee as set forth in the lease granted to the
2 lessee pursuant to this part.

3 -5 **Administrative rules.** The department shall adopt
4 rules pursuant to chapter 91 necessary for the purpose of this
5 part and shall collaborate with the department of agriculture to
6 effectuate this part."

7 SECTION 2. Section 163D-4, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§163D-4 Powers; generally.** (a) Except as otherwise
10 limited by this chapter, the corporation may:

- 11 (1) Sue and be sued;
- 12 (2) Have a seal and alter the same at its pleasure;
- 13 (3) Make and alter bylaws for its organization and
14 internal management;
- 15 (4) Adopt rules under chapter 91 necessary to effectuate
16 this chapter in connection with its projects,
17 operations, and properties;
- 18 (5) Make and execute contracts and all other instruments
19 necessary or convenient for the exercise of its powers
20 and functions under this chapter;
- 21 (6) Carry out surveys, research, and investigations into
22 technological, business, financial, consumer trends,



1 and other aspects of agricultural production in the
2 national and international community;

3 (7) Acquire or contract to acquire by grant or purchase
4 any real, personal, or mixed property or any interest
5 therein for its immediate or future use for the
6 purposes of this chapter; own, hold, improve, and
7 rehabilitate any real, personal, or mixed property
8 acquired, and sell, assign, exchange, transfer,
9 convey, lease, or otherwise dispose of, or encumber
10 the same;

11 (8) By itself, or in partnership with qualified persons,
12 acquire, construct, reconstruct, rehabilitate,
13 improve, alter, or repair any infrastructure or
14 accessory facilities in connection with any project;
15 own, hold, sell, assign, transfer, convey, exchange,
16 lease, or otherwise dispose of, or encumber any
17 project;

18 (9) In cooperation with the department of agriculture,
19 pursuant to chapter 167, or otherwise through direct
20 investment or coventure with a professional investor
21 or enterprise or any other person, or otherwise, to
22 acquire, construct, operate, and maintain water



1 facilities for conveying, distributing, and
2 transmitting water for irrigation and agricultural
3 uses at rates or charges determined by the
4 corporation; provided that:

5 (A) This chapter shall not be construed to permit or
6 allow the department of agriculture or any
7 agribusiness development corporation to:

8 (i) Amend or modify rights or entitlements to
9 water as provided for by article XI, section
10 7, of the Constitution of the State of
11 Hawaii, or the Hawaiian Homes Commission
12 Act, 1920, as amended, and chapter 168;

13 (ii) Diminish or abridge the traditional and
14 customary rights of ahupua`a tenants who
15 inhabited the Hawaiian Islands prior to 1778
16 under sections 1-1 and 7-1; and

17 (iii) Impair, abridge, or terminate the legal
18 rights or interests to water and its uses,
19 whether by lease, easement, or other means,
20 which are possessed or held by organizations
21 whose primary purpose is to benefit people
22 of Hawaiian ancestry; and



- 1 (B) All usage of water shall be in accordance with
2 chapter [H]174C[H] and other applicable laws in
3 the State;
- 4 (10) Assist agricultural enterprises by conducting detailed
5 marketing analysis and developing marketing and
6 promotional strategies to strengthen the position of
7 those enterprises and to better exploit local,
8 national, and international markets;
- 9 (11) Carry out specialized programs designed to develop new
10 markets for Hawaii agricultural products;
- 11 (12) Receive, examine, and determine the acceptability of
12 applications of qualified persons for allowances or
13 grants for the development of new crops and
14 agricultural products, the expansion of established
15 agricultural enterprises, and the altering of existing
16 agricultural enterprises;
- 17 (13) Coordinate its activities with any federal or state
18 farm credit programs;
- 19 (14) Grant options to purchase any project or to renew any
20 lease entered into by it in connection with any of its
21 projects, on the terms and conditions it deems
22 advisable;



1 (15) Provide advisory, consultative, training, and
2 educational services, technical assistance, and advice
3 to any person, partnership, or corporation, either
4 public or private, in order to carry out the purposes
5 of this chapter, and engage the services of
6 consultants on a contractual basis for rendering
7 professional and technical assistance and advice;

8 (16) Procure insurance against any loss in connection with
9 its property and other assets and operations in such
10 amounts and from such insurers as it deems desirable;

11 (17) Accept gifts or grants in any form from any public
12 agency or any other source; and

13 (18) Do all things necessary or proper to carry out the
14 purposes of this chapter.

15 (b) The corporation shall develop, promote, assist, and
16 market export crops and other crops for local markets.

17 (c) Except as otherwise limited by this chapter, the
18 corporation shall provide assistance to lessees of public land
19 under chapter 171, part by providing services including
20 marketing analysis, promotional strategies, technical training
21 and assistance services, or other corporate business solutions,



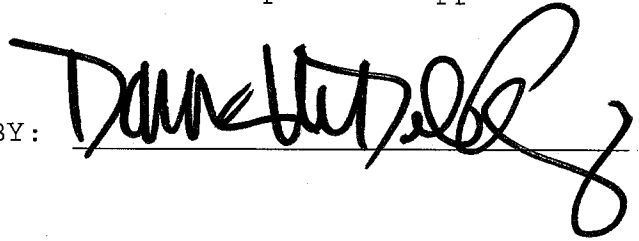
1 which shall assist or enable the lessee to carry out the terms
2 of a lease authorized under chapter 171, part ."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

6

INTRODUCED BY:

A large, stylized handwritten signature in black ink, appearing to read "Dan Hutto", is written over a horizontal line. The signature is highly cursive and extends significantly to the right of the line.

Report Title:

Public Lands; Lease; Agricultural Activities; Agribusiness Development Corporation

Description:

Establishes lessee selection criteria and lease requirements for the department of land and natural resources to use to lease public land to qualified farmers for agricultural activities. Requires the agribusiness development corporation to assist qualified farmers who lease public land for agricultural activities with marketing, technical, or business needs.

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