

**"CHAPTER 166
AGRICULTURAL PARKS**

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Private agricultural parks, see chapter 169.

" **[\$166-1] Legislative findings.** The legislature finds that important agricultural lands should be preserved for productive purposes; the contribution of diversified agriculture and aquaculture to export and local markets should be expanded, thereby increasing its importance in the State's economy; and continued use of the State's agricultural land resources should be ensured by providing lands to new farmers, displaced farmers, and other qualified farmers. In order to meet these goals, the objectives of the State shall include the provision of: lands of appropriate size and productive potential, with an adequate supply of water, to ensure economically viable farm operations; lands at reasonable cost with long term tenure and security from urbanization pressure; and lands with common facilities and activities to encourage farm production and distribution economies. [L 1986, c 222, pt of §1]

" **[\$166-2] Definitions.** For the purpose of this chapter:
"Agricultural activities" means the care and production of livestock, livestock products, poultry, or poultry products, or apiary, horticultural, or floricultural products, or the planting, cultivating, and harvesting of crops or trees, including tree farms.

"Agricultural park" means any agricultural or aquacultural complex so designated by the board, for which state land or state funds are used, in order to meet the goals and objectives stated in section 166-1. Agricultural buildings, farm residences, and employee dwellings necessary to the production and distribution of agricultural and aquacultural commodities may be considered part of the agricultural park.

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

"Board" means the board of agriculture.

"Department" means the department of agriculture. [L 1986, c 222, pt of §1]

" **§166-3 Authority to plan, develop, and manage agricultural parks.** The department of agriculture shall plan, develop, and manage agricultural parks in accordance with this chapter, on public lands set aside by the governor for use as agricultural parks pursuant to section 171-11; on other lands with the approval of the board of agriculture as may be subject to a

partnership agreement pursuant to sections 166-4 and 166-5; and on lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 155-4(11). [L 1986, c 222, pt of §1; am L 1993, c 102, §1; am L 1998, c 11, §14]

" **[§166-3.5] Commercial activity.** The department may allow, in each of its existing and future agricultural parks, the disposition of no more than two lots within an agricultural park for the processing, marketing, and displaying of agricultural crops or commodities, which shall include any product created through value-added processes as defined by rules adopted by the board. The department shall allow agricultural-based commercial venture operations that may sell to the general public; provided that any such lots shall be leased and operated by an agricultural park lessee in good standing with the department. [L 1999, c 277, §2]

" **§166-4 Park development.** Except as herein provided, the department may develop, on behalf of the State or in partnership with a federal agency, a county, or a private party, agricultural parks which, at the option of the board, shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of buildings thereon; provided that:

- (1) The board finds the agricultural park is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (2) The development of the proposed agricultural park does not contravene any safety standards or tariffs approved by the public utilities commission for public utilities;
- (3) The legislative body of the county in which the agricultural park is to be situated shall have approved the agricultural park.
 - (A) The legislative body shall approve or disapprove the agricultural park within forty-five days after the department has submitted the preliminary plans and specifications for the agricultural park to the legislative body. If after the forty-fifth day an agricultural park is not disapproved, it shall be deemed approved by the legislative body.
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees,

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

(C) The final plans and specifications for the agricultural park shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the planning, zoning, building, construction, and subdivision standards for that agricultural park. For purposes of sections 501-85 and 502-17, the chairperson of the board of agriculture or the responsible county official may certify maps and plans of lands connected with the agricultural park as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and such maps and plans shall be accepted for registration or recordation by the land court and registrar; and

(4) The State shall assume the responsibility of maintaining all roads within the agricultural park if the roads are developed exempt from applicable county ordinances, charter provisions, and rules regarding roads. [L 1986, c 222, pt of §1; am L 1987, c 111, §1; am L 1990, c 52, §1]

" **§166-5 Joint ventures.** Any agricultural park developed by the department in partnership with a federal agency, a county, or a private party shall be subject to a partnership agreement approved by the board of agriculture, which agreement shall provide, at a minimum:

- (1) A determination by the board that it is in the public interest to enter into the partnership agreement;
- (2) Long-term assurance that the land will be utilized for agricultural or aquacultural purposes;
- (3) Board approval of the agricultural park development plans and specifications;
- (4) Selection and management of lessees in a manner approved by the board; and
- (5) Conditions to ensure a public benefit from any state funds expended for the project. [L 1986, c 222, pt of §1; am L 1988, c 22, §1; am L 1990, c 52, §2; am L 1993, c 102, §2]

" **§166-6 Disposition.** (a) Any provision of this chapter to the contrary notwithstanding, the board may by negotiation, drawing of lot, or public auction, directly dispose of public lands and related facilities set aside and designated for use as agricultural parks, and any other lands and facilities under the jurisdiction of the department pursuant to section 166-3 and notwithstanding chapter 171. Except as provided by subsection (c), dispositions may be by lease and shall be subject to the requirements set forth in rules adopted by the board in conformity with section 166-9, and subject also to the following limitations:

- (1) The property shall be disposed of for agricultural or aquacultural purposes only;
- (2) The lessee shall derive the major portion of the lessee's total annual income from the lessee's activities on the premises; provided that this restriction shall not apply if failure to meet the restriction results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production of crops or products for which the disposition was granted;
- (3) The lessee shall comply with all federal and state laws regarding environmental quality control;
- (4) The board shall determine the specific uses for which the disposition is intended; parcel the land into minimum size economic units sufficient for the intended uses; make, or require the lessee to make improvements as are required to achieve the intended uses; set the upset price or lease rent based upon an appraised evaluation of the property value adjustable as provided in rules adopted in accordance with chapter 91 to the specified use of the lot; set the term of the lease, which shall be not less than fifteen years nor more than fifty-five years, including any extension granted for mortgage lending or guarantee purposes; and establish other terms and conditions as it may deem necessary, including but not limited to restrictions against alienation and provisions for withdrawal by the board;
- (5) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any county; and
- (6) Any transferee, assignee, or sublessee of an agricultural park lease shall first qualify as an applicant under this chapter. For the purpose of this paragraph, any transfer, assignment, sale, or other disposition of any interest, excluding a security

interest, of any legal entity which holds an agricultural park lease shall be treated as a transfer of the agricultural park lease and shall be subject to the approval of the board of agriculture upon reasonable terms and conditions, not inconsistent with this chapter or rules of the board, which the board may deem necessary. No transfer shall be approved by the board if the disposition of the stock, or assets or other interest of the legal entity would result in the failure of the entity to qualify for an agricultural park lease.

(b) The violation of any provision contained in this section shall be sufficient cause for the board, after due notice of breach or default as provided in rules adopted by the board in conformance with section 166-9, to cancel the lease and take possession of the land.

(c) The board of agriculture may issue easements, permits, and rights of entry covering agricultural park lands for uses consistent with the purposes for which the lands were set aside or are otherwise subject to the authority of the department pursuant to section 166-3. [L 1986, c 222, pt of §1; am L 1988, c 22, §2; am L 1990, c 52, §3; am L 1993, c 102, §3; am L 1994, c 218, §1]

" **§166-7 Applicants.** Any person, including a revocable living trust, partnership, corporation, limited liability company, association, or an agricultural cooperative organized under chapter 421 at least seventy-five per cent of the trustees, partners, officers and stockholders, or members of which qualify individually, may apply for an agricultural park lease if the person, trustees, partners, officers and stockholders, or members are eligible and qualified according to criteria set forth in rules adopted by the board in conformance with section 166-9. [L 1986, c 222, pt of §1; am L 1988, c 22, §3; am L 1990, c 52, §4; am L 1999, c 40, §1]

" **§166-8 Preference right.** Any person who is otherwise qualified to take an agricultural park lot, who is a veteran with an honorable discharge, or who qualifies as a displaced farmer, or who operates a farm located in a zoning district where such use is a nonconforming use, or who qualifies as a new farmer, shall be given preference in obtaining an agricultural park lot. [L 1986, c 222, pt of §1; am L 1988, c 22, §4; am L 1990, c 52, §5]

" **[§166-8.5] Rights of holders of security interests.** (a) For the purpose of this section:

"Institutional lender" means a federal, state, or private lending institution licensed to do business in the State of Hawaii in making loans to qualified applicants under section 166-7 on the basis of a lease for security, in whole or in part, together with any other entity who acquires all or substantially all of an institutional lender's loan portfolio.

"Making a loan" means lending of new money after June 28, 1999 or the renewal or extension of indebtedness owing by a qualified applicant to an institutional lender.

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

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

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

- (1) If the lease is canceled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, [then] in either event, the institutional lender shall be entitled to issuance of a new lease in its name for a term equal to the term of the lease remaining immediately prior to the cancellation, termination, or rejection, with all terms and conditions being the same as in the canceled, terminated, or rejected lease, except only for such liens, claims, and encumbrances, if any, which were superior to the institutional lender prior to the cancellation, termination, or rejection. If a lease is rejected or deemed rejected under bankruptcy law, the lease shall be deemed to be canceled and terminated for all purposes under state law;
- (2) If the lessee's interest under a lease is transferred to an institutional lender, including by reason of the provisions of paragraph (1) by reason of acquisition of lessee's interest pursuant to a foreclosure sale,

judicial or nonjudicial, and by reason of an assignment in lieu of foreclosure, then:

- (A) The institutional lender shall be liable for the obligations of the lessee under the lease for the period of time during which the institutional lender is the holder of lessee's interest but shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease;
 - (B) The provisions of section 166-6(a)(1) and (2) shall not apply to the lease or the demised land during such time the institutional lender holds the lease; provided, however, that for non-monetary lease violations, the institutional lender shall first remedy the lease terms which caused the cancellation, termination, or rejection to the satisfaction of the board; provided further that the new lease issued to the institutional lender shall have a sunset date (one hundred twenty days from the effective date of issuance), when the institutional lender shall either sell or assign the lease, after which date the provisions of section 166-6(a) shall become applicable to the new lease;
- (3) As long as there is a delinquent loan balance secured by a security interest, the lease may not be canceled or terminated, except for cancellation by reason of default of the lessee, and no increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, may be imposed or become payable, and no lands may be withdrawn from the lease, except by eminent domain proceedings beyond the control of the board, except with prior written consent by the institutional lender and such consent shall not be unreasonably withheld; and
- (4) If the lease contains any provision requiring the payment of a premium to the lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by [an] institutional lender shall have been paid in full.
- (d) Ownership of both the lease and the security interest by an institutional lender shall not effect or cause a merger thereof, and both interests shall remain distinct and in full

force and effect unless the institutional lender elects in writing to merge said estates with the consent of the board.

(e) The board may include in any consent form or document such provisions not inconsistent with the intent of this section as may be required to make a lease mortgageable or more acceptable for mortgageability by an institutional lender.

(f) The purchaser, including junior lien holder, of the institutional lender's security interest, and the same is assigned to such purchaser, then the rights herein shall be exercisable by such transferee as successor in interest to the institutional lender, except that such purchase shall conform with subsection (c)(4) and, further, the transfer of such rights shall be reserved unto and exercisable only to an institutional lender. Other purchasers may not be precluded in acquiring the institutional lender's security interest but cannot have exercisable rights as successor in interest to the original institutional lender. [L 1999, c 160, §19]

Revision Note

"June 28, 1999" substituted for "the effective date of this Act".

" **§166-9 Rules.** The board shall adopt rules in accordance with chapter 91 in order to effectuate the purposes of this chapter. Such rules shall provide, without limitation, for definitions; planning generally and for intensive agricultural uses; general eligibility requirements; qualifications of applicants; preference rights; disposition of leases; lease provisions; lease restrictions generally and for intensive agricultural uses; and notice of breach or default. Rules adopted by the board for the purposes of this chapter shall be consistent with sections 171-11 and 171-20. [L 1986, c 222, pt of §1; am L 1988, c 22, §5; am L 1990, c 52, §6]

" **§166-10 Agricultural park special fund.** (a) There is created in the state treasury a special fund to be designated as the agricultural park special fund. The proceeds in the fund shall be used for the following purposes:

- (1) Payment of agricultural park lease rents of privately owned lands under lease to the State pursuant to sections 171-112 and 166-3;
- (2) Establishing, operating, maintaining, and improving infrastructure improvements in agricultural parks designated by the department pursuant to section 166-3; and

- (3) Any other purposes deemed necessary by the department for the purpose of maintaining and operating those agricultural parks and related facilities designated by the department pursuant to section 166-3.

For the purpose of paragraph (2), infrastructure improvements may include, but shall not be limited to: irrigation water system projects, wind power or hydro power and pumping systems, waste disposal systems, domestic water systems, roads, street lights, land and roads drainage, and bridges.

(b) Moneys appropriated for the purpose of the fund; any other provision of the law to the contrary notwithstanding, all moneys received or collected from an agricultural park project designated pursuant to section 166-3, including residential and agricultural lot lease rents; and all money collected or received by the department for the use and maintenance of domestic and irrigation water systems within an agricultural park and other systems enumerated in subsection (a) shall be deposited into the agricultural park special fund. All interest earned or accrued on moneys deposited in the fund shall become a part of the fund. Moneys in the fund shall be expended upon warrants drawn by the comptroller. [L 1986, c 222, pt of §1; am L 1990, c 52, §7]

" **[\$166-11] Lease negotiation.** (a) The department of agriculture may negotiate and enter into leases with any person who:

- (1) As of July 1, 1996, holds a revocable permit for agricultural purposes; or
- (2) Has formerly held an agricultural lease which expired within the last ten years preceding July 1, 1996, and has continued to occupy the state land; and
- (3) Does not own agriculturally-zoned land of twenty-five acres or more in the State, individually or jointly with a spouse, or whose spouse does not own twenty-five acres or more of agriculturally-zoned land in the State.

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

- (1) Zoned and used for agricultural purposes;
- (2) Set aside by governor's executive order to the department of agriculture for agricultural uses only; and
- (3) Not needed by any state or county agency for any other public purpose.

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

- (1) Require the appraisal of the parcel to determine the fair market value;
- (2) Require the payment of annual lease rent based on the fair market value established by appraisal;
- (3) Require the payment of a premium, computed at twenty-five per cent of the annual lease rent, with the premium to be added to the annual lease rent for each year of the lease equal to the number of years the lessee has occupied the land, except that the premium period shall not exceed four years; and
- (4) Recover from the lessee the costs of expenditures required by the department to convert the parcel into leasehold.

Within six months from July 1, 1996, the department shall notify in writing the permittees of lands eligible for lease negotiations under this section and shall inform the permittees of the terms, conditions, and restrictions provided by this section. Any permittee may apply for a lease; provided that the application shall be submitted to the department in writing within thirty days from the date of receipt of notification; provided further that the department may require documentary proof from any applicant to determine that the applicant meets eligibility and qualification requirements for a lease as specified by this section. [L 1996, c 88, §2]

Revision Note

"July 1, 1996," substituted for "the effective date of this Act" and "the effective date of this section".