
A BILL FOR AN ACT

RELATING TO STATE LANDS.

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

1 SECTION 1. Section 166-6, Hawaii Revised Statutes, is
2 amended to read as follows:

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

- 14 (1) The property shall be disposed of for agricultural or
15 aquacultural purposes only;
- 16 (2) The lessee shall derive the major portion of the
17 lessee's total annual income from the lessee's



1 activities on the premises; provided that this
2 restriction shall not apply if failure to meet the
3 restriction results from mental or physical disability
4 or the loss of a spouse, or if the premises are fully
5 utilized in the production of crops or products for
6 which the disposition was granted;

7 (3) The lessee shall comply with all federal and state
8 laws regarding environmental quality control;

9 (4) The board shall determine the specific uses for which
10 the disposition is intended; parcel the land into
11 minimum size economic units sufficient for the
12 intended uses; make, or require the lessee to make
13 improvements as are required to achieve the intended
14 uses; set the upset price or lease rent based upon an
15 appraised evaluation of the property value adjustable
16 as provided in rules adopted in accordance with
17 chapter 91 to the specified use of the lot; set the
18 term of the lease, which shall be not less than
19 fifteen years nor more than fifty-five years,
20 including any extension granted for mortgage lending
21 or guarantee purposes; and establish other terms and



1 conditions as it may deem necessary, including but not
2 limited to restrictions against alienation and
3 provisions for withdrawal by the board;

4 (5) No lease shall be made to any person who is in arrears
5 in the payment of taxes, rents, or other obligations
6 owing the State or any county; and

7 (6) Any transferee, assignee, or sublessee of an
8 agricultural park lease shall first qualify as an
9 applicant under this chapter. For the purpose of this
10 paragraph, any transfer, assignment, sale, or other
11 disposition of any interest, excluding a security
12 interest, of any legal entity which holds an
13 agricultural park lease shall be treated as a transfer
14 of the agricultural park lease and shall be subject to
15 the approval of the board of agriculture upon
16 reasonable terms and conditions, not inconsistent with
17 this chapter or rules of the board, which the board
18 may deem necessary. No transfer shall be approved by
19 the board if the disposition of the stock, or assets
20 or other interest of the legal entity would result in



1 the failure of the entity to qualify for an
2 agricultural park lease.

3 (b) The violation of any provision contained in this
4 section shall be sufficient cause for the board, after [~~due~~]:

5 (1) Due notice of breach or default as provided in rules
6 adopted by the board in conformance with section
7 166-9[~~7-10~~]; and

8 (2) If the basis for the cancellation of the lease is due
9 to the lessee being in arrears of lease payments, the
10 lessee rejects or fails to make a timely response to a
11 written offer for the lessee to establish a payment
12 plan approved by the board,

13 the board shall cancel the lease and take possession of the
14 land.

15 (c) The board of agriculture may issue easements, permits,
16 and rights of entry covering agricultural park lands for uses
17 consistent with the purposes for which the lands were set aside
18 or are otherwise subject to the authority of the department
19 pursuant to section 166-3.



1 (d) The board of agriculture shall adopt rules pursuant to
2 chapter 91 to ensure the timely collection of lease payments and
3 to track lessees that are in arrears of lease payments."

4 SECTION 2. Section 163D-7, Hawaii Revised Statutes, is
5 amended by amending subsection (e) to read as follows:

6 "(e) Notwithstanding any provision of this chapter to the
7 contrary, when leasing corporation-controlled agricultural land,
8 the [~~corporation~~]:

9 (1) Corporation may contract with a financial institution
10 chartered under chapter 412 or a federal financial
11 institution, as defined under section 412:1-109, that
12 transacts business in this State to provide lease
13 management services. For the purposes of this
14 subsection, "lease management services" includes the
15 collection of lease rent and any other moneys owed to
16 the corporation related to the lease of agricultural
17 land under the corporation's control[-];

18 (2) Lease shall not be transferable or assignable, except
19 by devise, bequest, or intestate succession; provided
20 that with the approval of the corporation, the
21 assignment and transfer of a lease or unit thereof may



1 be made in accordance with current industry standards,
2 as determined by the corporation; provided further
3 that prior to the approval of any assignment of lease,
4 the corporation may review and approve the
5 consideration to be paid by the assignee and may
6 condition its consent to the assignment of the lease
7 on payment by the lessee of a premium based on the
8 amount by which the consideration for the assignment,
9 whether by cash, credit, or otherwise, exceeds the
10 depreciated cost of improvements and trade fixtures
11 being transferred to the assignee; provided further
12 that with respect to state agricultural leases, if a
13 foreclosure or sale occurs, the premium, if any, shall
14 be assessed only after the encumbrances of record and
15 any other advances made by the holder of a security
16 interest are paid;

17 (3) Lessee shall not sublet the whole or any part of the
18 demised premises except with the approval of the
19 corporation; provided that prior to the approval, the
20 corporation may review and approve the rent to be
21 charged to the sublessee; provided further that if the



1 lessee is required to pay rent based on a percentage
2 of its gross receipts, the receipts of the sublessee
3 shall be included as part of the lessee's gross
4 receipts; provided further that the corporation may
5 review and, if necessary, revise the rent of the
6 demised premises based upon the rental rate charged to
7 the sublessee including the percentage rent, if
8 applicable, and the rent shall not be revised
9 downward;

10 (4) Corporation shall not terminate any lease or tenancy
11 for failure of a lessee to pay rent without first
12 offering the lessee a written option to establish a
13 payment plan approved by the corporation; and

14 (5) Corporation shall ensure the timely collection of
15 lease payments and track lessees that are in arrears
16 of lease payments."

17 SECTION 3. Section 171-13, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§171-13 Disposition of public lands.** (a) Except as
20 otherwise provided by law and subject to other provisions of
21 this chapter, the board may:



- 1 (1) Dispose of public land in fee simple, by lease, lease
2 with option to purchase, license, or permit; and
- 3 (2) Grant easement by direct negotiation or otherwise for
4 particular purposes in perpetuity on such terms as may
5 be set by the board, subject to reverter to the State
6 upon termination or abandonment of the specific
7 purpose for which it was granted, provided the sale
8 price of such easement shall be determined pursuant to
9 section 171-17(b).

10 No person shall be eligible to purchase or lease public lands,
11 or to be granted a license, permit, or easement covering public
12 lands, who has had during the five years preceding the date of
13 disposition a previous sale, lease, license, permit, or easement
14 covering public lands canceled for failure to satisfy the terms
15 and conditions thereof.

16 (b) The board shall adopt rules pursuant to chapter 91 to
17 ensure the timely collection of lease payments and to track
18 lessees that are in arrears of lease payments."

19 SECTION 4. Section 171-20, Hawaii Revised Statutes, is
20 amended to read as follows:



1 **"§171-20 Notice of breach or default.** Except as otherwise
2 specifically provided in this chapter, in the event of a breach
3 or default of any term, covenant, restriction, or condition of
4 any lease or patent heretofore or hereafter issued under this
5 chapter, the board of land and natural resources shall deliver a
6 written notice of the breach or default by personal service or
7 by registered or certified mail to the party in default and to
8 each holder of record having any security interest in the land
9 covered by or subject to the lease or patent making demand upon
10 the party to cure or remedy the breach or default within sixty
11 days from the date of receipt of the notice; provided that where
12 the breach involves a failure to make timely rental payments
13 pursuant to the lease or patent heretofore or hereafter issued
14 under this chapter, the written notice shall include a demand
15 upon the party to cure the breach within less than sixty days,
16 but not less than five business days, after receipt of the
17 notice. Upon failure of the party to cure or remedy the breach
18 or default within the time period provided herein or within
19 [~~such~~] any additional period as the board may allow for good
20 cause[~~]~~ and upon failure of the lessee to establish a payment
21 plan approved by the board, the board [~~may~~], subject to section



1 171-21, may exercise [~~such~~] its rights as it may have at law or
2 as set forth in the lease or patent."

3 SECTION 5. Section 171-39, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§171-39 Leases; forfeiture.** Upon the violation of any
6 condition or term of any lease to be observed or performed by
7 the lessee or tenant, including the violation of any payment
8 plan established pursuant to section 171-20, the board of land
9 and natural resources shall, after the notice of default as
10 provided in section 171-20, and subject to the rights of each
11 holder of record having a security interest as provided in
12 section 171-21, terminate the lease or tenancy and take
13 possession of the leased land, without demand or previous entry
14 and without legal process, together with all improvements placed
15 thereon and shall retain all rent paid in advance as damages for
16 the violations."

17 SECTION 6. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect upon its approval.

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INTRODUCED BY:

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JAN 23 2019



H.B. NO. 1117

Report Title:

State Lands; DLNR; DOA; Agribusiness Development Corporation;
Lease

Description:

Requires the Board of Land and Natural Resources, Board of Agriculture, and the Agribusiness Development Corporation to ensure the timely collection of lease payments, track lessees that are in arrears of lease payments, and offer payment plans for lessees in arrears. Prohibits land leased by the Agribusiness Development Corporation from being assigned or subletted without corporation approval.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

