
A BILL FOR AN ACT

RELATING TO STATE LANDS.

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

1 SECTION 1. Section 163D-7, Hawaii Revised Statutes, is
2 amended by amending subsection (e) to read as follows:

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

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

15 (2) Lease shall not be transferable or assignable, except
16 by devise, bequest, or intestate succession; provided
17 that with the approval of the corporation, the



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

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



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

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

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

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

20 "§166-6 Disposition. (a) Any provision of this chapter
21 to the contrary notwithstanding, the board may by negotiation,



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

- 10 (1) The property shall be disposed of for agricultural or
11 aquacultural purposes only;
- 12 (2) The lessee shall derive the major portion of the
13 lessee's total annual income from the lessee's
14 activities on the premises; provided that this
15 restriction shall not apply if failure to meet the
16 restriction results from mental or physical disability
17 or the loss of a spouse, or if the premises are fully
18 utilized in the production of crops or products for
19 which the disposition was granted;
- 20 (3) The lessee shall comply with all federal and state
21 laws regarding environmental quality control;



- 1 (4) The board shall determine the specific uses for which
2 the disposition is intended; parcel the land into
3 minimum size economic units sufficient for the
4 intended uses; make, or require the lessee to make
5 improvements as are required to achieve the intended
6 uses; set the upset price or lease rent based upon an
7 appraised evaluation of the property value adjustable
8 as provided in rules adopted in accordance with
9 chapter 91 to the specified use of the lot; set the
10 term of the lease, which shall be not less than
11 fifteen years nor more than fifty-five years,
12 including any extension granted for mortgage lending
13 or guarantee purposes; and establish other terms and
14 conditions as it may deem necessary, including but not
15 limited to restrictions against alienation and
16 provisions for withdrawal by the board;
- 17 (5) No lease shall be made to any person who is in arrears
18 in the payment of taxes, rents, or other obligations
19 owing the State or any county; and
- 20 (6) Any transferee, assignee, or sublessee of an
21 agricultural park lease shall first qualify as an



1 applicant under this chapter. For the purpose of this
2 paragraph, any transfer, assignment, sale, or other
3 disposition of any interest, excluding a security
4 interest, of any legal entity which holds an
5 agricultural park lease shall be treated as a transfer
6 of the agricultural park lease and shall be subject to
7 the approval of the board of agriculture upon
8 reasonable terms and conditions, not inconsistent with
9 this chapter or rules of the board, which the board
10 may deem necessary. No transfer shall be approved by
11 the board if the disposition of the stock, or assets
12 or other interest of the legal entity would result in
13 the failure of the entity to qualify for an
14 agricultural park lease.

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

17 (1) Due notice of breach or default as provided in rules
18 adopted by the board in conformance with section
19 166-9 [~~7~~]; and

20 (2) If the basis for the cancellation of the lease is due
21 to the lessee being in arrears of lease payments, the



1 lessee rejects or fails to make a timely response to a
2 written offer for the lessee to establish a payment
3 plan approved by the board,
4 the board shall cancel the lease and take possession of the
5 land.

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

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

14 SECTION 3. Section 171-20, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§171-20 Notice of breach or default.** Except as otherwise
17 specifically provided in this chapter, in the event of a breach
18 or default of any term, covenant, restriction, or condition of
19 any lease or patent heretofore or hereafter issued under this
20 chapter, the board of land and natural resources shall deliver a
21 written notice of the breach or default by personal service or



1 by registered or certified mail to the party in default and to
2 each holder of record having any security interest in the land
3 covered by or subject to the lease or patent making demand upon
4 the party to cure or remedy the breach or default within sixty
5 days from the date of receipt of the notice; provided that where
6 the breach involves a failure to make timely rental payments
7 pursuant to the lease or patent heretofore or hereafter issued
8 under this chapter, the written notice shall include a demand
9 upon the party to cure the breach within less than sixty days,
10 but not less than five business days, after receipt of the
11 notice. Upon failure of the party to cure or remedy the breach
12 or default within the time period provided herein or within
13 [~~such~~] any additional period as the board may allow for good
14 cause[7] and upon failure of the lessee to establish a payment
15 plan that the board has the sole discretion to approve, the
16 board [~~may~~], subject to section 171-21, may exercise [~~such~~] its
17 rights as it may have at law or as set forth in the lease or
18 patent."

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



1 "§171-39 **Leases; forfeiture.** Upon the violation of any
2 condition or term of any lease to be observed or performed by
3 the lessee or tenant, including the violation of any payment
4 plan established pursuant to section 171-20, the board of land
5 and natural resources shall, after the notice of default as
6 provided in section 171-20, and subject to the rights of each
7 holder of record having a security interest as provided in
8 section 171-21, terminate the lease or tenancy and take
9 possession of the leased land, without demand or previous entry
10 and without legal process, together with all improvements placed
11 thereon and shall retain all rent paid in advance as damages for
12 the violations."

13 SECTION 5. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 6. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect on July 1, 2150.



Report Title:

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

Description:

Requires the 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. Authorizes the BLNR to allow payment plans for a breach or default of a lease or patent. Prohibits land leased by the Agribusiness Development Corporation from being assigned or sublet without Corporation approval. (HB1117 HD2)

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