

A BILL FOR AN ACT

RELATING TO AGRICULTURAL ENTERPRISES.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 AGRICULTURAL ENTERPRISES

6 § -1 Purpose. Article XI, section 3, of the Hawaii
7 State Constitution provides in part that the "State shall
8 conserve and protect agricultural lands, promote diversified
9 agriculture, increase agricultural self-sufficiency and assure
10 the availability of agriculturally suitable lands."

11 The legislature finds that smaller scale farming
12 operations, particularly those associated with diversified
13 agriculture, often do not have ready access to, or the resources
14 to pay for, their own modern processing, packing, storage, and
15 distribution enterprises to allow them to expand or maximize the
16 productivity of their agricultural operations. Due to global
17 competition and the recent implementation of national food



1 safety standards, the department of agriculture has found it
2 necessary to support the growth of diversified agriculture by
3 encouraging agricultural enterprises on lands under the
4 department's jurisdiction. The department of agriculture
5 encourages activities, including planning, designing,
6 constructing, operating, and managing agricultural enterprises,
7 to ensure the economic viability of agricultural operations and
8 allows lessees to do the same. Therefore, the legislature finds
9 that it is in the State's best interests and helps meet state
10 constitutional requirements to promote and support diversified
11 agriculture and increase agricultural self-sufficiency to
12 establish an agricultural enterprise program within the
13 department of agriculture.

14 Accordingly, the purpose of this chapter is to authorize
15 the department of agriculture or its lessees to plan, design,
16 construct, operate, manage, maintain, repair, demolish, and
17 remove infrastructure or improvements on any lands over which
18 the department has jurisdiction where the activity is necessary
19 to support and promote agriculture; to accept from the
20 department of land and natural resources the transfer of any



1 lands that will serve an agricultural purpose; and to
2 efficiently operate or manage those resources.

3 **§ -2 Definitions.** As used in this chapter, unless the
4 context otherwise requires:

5 "Agricultural activities" include:

6 (1) The care and production of livestock; livestock
7 products; poultry; poultry products; and apiary,
8 horticultural, and floricultural products;

9 (2) The planting, cultivating, and harvesting of crops or
10 trees; and

11 (3) Any other activity that is directly associated with
12 agriculture.

13 "Agricultural enterprise" means an activity directly and
14 primarily supporting the production and sale of agricultural
15 products in the State.

16 "Agricultural enterprise lands" means agricultural lands
17 that are not designated as agricultural parks or non-
18 agricultural park lands pursuant to chapter 166 or 166E,
19 respectively.

20 "Aquacultural activities" means the farming or ranching of
21 any plant or animal species in a controlled salt, brackish, or



1 freshwater environment; provided that the farm or ranch is on or
2 directly adjacent to land.

3 "Board" means the board of agriculture.

4 "Department" means the department of agriculture.

5 "Lessee" means a lessee under a lease issued by or
6 transferred to the department or any tenant, licensee, grantee,
7 assignee, or other person authorized to conduct an agricultural
8 enterprise by the board or department.

9 **§ -3 Department's powers in general; agricultural**
10 **enterprises.** In addition to any other powers authorized in this
11 chapter, for the purposes of supporting and promoting
12 agriculture, the department may:

13 (1) Plan, design, construct, operate, manage, maintain,
14 repair, demolish, or remove infrastructure or
15 improvements on any lands under the jurisdiction of
16 the department; and

17 (2) Permit a lessee to plan, design, construct, operate,
18 manage, maintain, repair, demolish, or remove
19 infrastructure or improvements on any lands under the
20 jurisdiction of the department.



1 § -4 **Transfer and management of agricultural enterprise**
2 **lands and agricultural enterprises; agricultural enterprise**

3 **program.** (a) Upon mutual agreement and approval by the board
4 and the board of land and natural resources, the department:

5 (1) May accept from the department of land and natural
6 resources the transfer and management of certain
7 qualifying agricultural enterprise lands and
8 agricultural enterprises; and

9 (2) Upon acceptance, shall receive by transfer certain
10 assets, including position counts, related to the
11 management of existing encumbered and unencumbered
12 agricultural enterprise lands, agricultural
13 enterprises, and related facilities.

14 (b) The department shall administer an agricultural
15 enterprise program to manage the transferred agricultural
16 enterprise lands and agricultural enterprises under rules
17 adopted by the board pursuant to chapter 91. The program and
18 its rules shall be separate and distinct from the respective
19 programs and rules for agricultural parks and non-agricultural
20 parks. Agricultural enterprise lands and agricultural
21 enterprises shall not be the same as, and shall not be selected



1 or managed as, lands under agricultural park or non-agricultural
2 park leases. Notwithstanding any other law to the contrary, the
3 agricultural enterprise program shall include the following
4 conditions pertaining to the transfer of encumbered or
5 unencumbered agricultural enterprise lands and agricultural
6 enterprises:

7 (1) At the time of transfer, the lessee or permittee:

8 (A) Shall be in full compliance with the existing
9 lease or permit;

10 (B) Shall not be in arrears in the payment of taxes,
11 rents, or other obligations owed to the State or
12 any county; and

13 (C) Shall have an economically viable agricultural
14 operation as determined by the board;

15 (2) No encumbered or unencumbered agricultural enterprise
16 lands or agricultural enterprises with soils that are
17 classified by the land study bureau's detailed land
18 classification as having an overall (master)
19 productivity rating of class A or B shall be
20 transferred for the use or development of golf
21 courses, golf driving ranges, or country clubs; and



1 (3) The board shall determine the manner of transfer of
2 agricultural enterprise lands and agricultural
3 enterprises.

4 (c) For any encumbered or unencumbered agricultural
5 enterprise lands and agricultural enterprises transferred to the
6 department that are not being utilized or required for the
7 public purpose stated in an executive order issued by the
8 governor to the department pursuant to section 171-11, the order
9 setting aside the lands shall be withdrawn, and the lands shall
10 be returned to the department of land and natural resources.

11 **§ -5 Conversion of other qualified and encumbered**
12 **agricultural lands.** The department shall establish criteria by
13 rules adopted pursuant to chapter 91 and, subject to approval by
14 the board, may convert qualified and encumbered agricultural
15 enterprise lands and agricultural enterprises to department
16 leases or other forms of encumbrance.

17 **§ -6 Extension of qualified and encumbered agricultural**
18 **enterprise lands and agricultural enterprises.** Notwithstanding
19 chapter 171, the board shall establish criteria and rules to
20 allow the cancellation, renegotiation, and extension of
21 transferred encumbrances by the department. Notwithstanding any



1 law to the contrary, qualified and encumbered agricultural
2 enterprise lands and agricultural enterprises transferred to the
3 department shall not have the respective length of term of the
4 lease or rents reduced over the remaining fixed term of the
5 applicable encumbrances.

6 **§ -7 Board rules.** The board shall adopt rules pursuant
7 to chapter 91, including eligibility requirements for each
8 disposition and applicant qualification, to effectuate the
9 purposes of this chapter.

10 **§ -8 Agricultural enterprise special fund; established.**

11 (a) There is established in the state treasury the agricultural
12 enterprise special fund to be administered by the department,
13 into which shall be deposited:

- 14 (1) Legislative appropriations to the special fund; and
- 15 (2) All lease rent, fees, penalties, and any other revenue
- 16 or funds collected from agricultural enterprise lands
- 17 and agricultural enterprises, together with the
- 18 revenue or funds collected from agricultural
- 19 enterprise lands and agricultural enterprises that are
- 20 transferred, or in the process of being transferred,
- 21 to the department under this chapter.



1 (b) Moneys in the special fund shall be used for planning,
 2 designing, constructing, operating, maintaining, managing,
 3 repairing, demolishing, and removing infrastructure or
 4 improvements on agricultural enterprise lands and for
 5 agricultural enterprises under this chapter.

6 **§ -9 Disposition.** (a) Notwithstanding any provision of
 7 this chapter and chapter 171 to the contrary, the department may
 8 dispose of the following by negotiation, drawing of lots,
 9 conversion, or public auction:

10 (1) Public lands and related enterprises set aside and
 11 designated for use pursuant to this chapter; and

12 (2) Other lands and enterprises under the jurisdiction of
 13 the department pursuant to section -10.

14 Except as provided by subsection (d), the department shall
 15 dispose of public lands by lease.

16 (b) In all dispositions, the department shall be subject
 17 to the requirements set forth in rules adopted by the board
 18 consistent with section -7 and subject to the following:

19 (1) All land and enterprises shall be disposed of in a
 20 manner that supports or promotes agricultural or
 21 aquacultural activities;



- 1 (2) Each lessee shall derive a major portion of the
- 2 lessee's total annual income earned from the lessee's
- 3 activities on the premises; provided that this
- 4 restriction shall not apply if:
- 5 (A) Failure to meet the restriction results from
- 6 mental or physical disability of the lessee or
- 7 the loss of the lessee's spouse; or
- 8 (B) The premises are fully used to support or promote
- 9 the agricultural or aquacultural activities for
- 10 which the disposition was granted;
- 11 (3) The lessee shall comply with all federal and state
- 12 laws regarding environmental quality control;
- 13 (4) The board shall:
- 14 (A) Determine the specific uses for which the
- 15 disposition is intended;
- 16 (B) Parcel the land into minimum size economic units
- 17 sufficient for the intended uses;
- 18 (C) Make, or require the lessee to make, improvements
- 19 that are necessary to achieve the intended uses;



1 (D) Set the upset price or lease rent based upon an
2 appraised evaluation of the property value,
3 adjustable to the specified use of the lot;

4 (E) Set the term of the lease, which shall not be
5 less than fifteen years or more than sixty-five
6 years, including any extension granted for
7 mortgage lending or guarantee purposes; and

8 (F) Establish any other terms and conditions that it
9 deems necessary, including restrictions against
10 alienation and provisions for withdrawal by the
11 board; and

12 (5) Any transferee, assignee, or sublessee of an
13 agricultural enterprise lease shall first qualify as
14 an applicant under this chapter. For the purpose of
15 this paragraph, any transfer, assignment, sale, or
16 other disposition of any interest, excluding a
17 security interest, by any legal entity that holds an
18 agricultural enterprise lease shall be treated as a
19 transfer of the agricultural enterprise lease and
20 shall be subject to the approval of the board,
21 reasonable terms and conditions consistent with this



1 chapter, and rules adopted pursuant to this chapter.
 2 No transfer shall be approved by the board if the
 3 disposition of the stock or assets or other interest
 4 of the applicant would result in the failure of the
 5 person to qualify for an agricultural enterprise
 6 lease.

7 (c) The violation of any provision in this section shall
 8 be cause for the board to cancel the lease and take possession
 9 of the land, or take other action as the board, in its sole
 10 discretion, deems appropriate; provided that the board shall
 11 provide notice to the lessee of the violation in accordance with
 12 rules adopted pursuant to section -7.

13 (d) The board may issue easements, licenses, permits, and
 14 rights-of-entry for uses that are consistent with the purposes
 15 for which the lands were set aside or are otherwise subject to
 16 the authority of the department pursuant to section -10.

17 **§ -10 Authority to plan, design, develop, and manage**
 18 **agricultural enterprise lands and agricultural enterprises.** The
 19 department, or its lessees subject to the department's approval,
 20 may plan, design, develop, and manage agricultural enterprise
 21 lands and agricultural enterprises on:



- 1 (1) Public lands set aside by executive order pursuant to
2 section 171-11 for use as agricultural enterprise
3 lands and agricultural enterprises;
- 4 (2) Other lands with the approval of the board that may be
5 subject to a joint venture partnership agreement
6 pursuant to section -11; and
- 7 (3) Lands acquired by the department by way of
8 foreclosure, voluntary surrender, or otherwise
9 pursuant to section 155-4(11).

10 **§ -11 Agricultural enterprise lands and agricultural**
11 **enterprise development.** The department may develop agricultural
12 enterprise lands and agricultural enterprises on behalf of the
13 State or in partnership with a federal agency, county, or
14 private party.

15 **§ -12 Lease negotiation.** (a) The department may
16 negotiate and enter into leases with any person who:

- 17 (1) Holds a revocable permit for agricultural purposes;
- 18 (2) Has formerly held an agricultural lease or a holdover
19 lease of public land that expired within the last ten
20 years and has continued to occupy the land; or



1 (3) Is determined by the department to have a beneficial
2 impact on agriculture;
3 provided that the department shall notify in writing those
4 eligible for lease negotiations under this section and shall
5 inform the applicants of the terms, conditions, and restrictions
6 provided by this section.

7 Any eligible person may apply for a lease by submitting a
8 written application to the department within thirty days of the
9 date of receipt of notification; provided that the department
10 may require documentary proof from any applicant to determine
11 that the applicant meets eligibility and qualification
12 requirements for a lease.

13 (b) Lands eligible for lease negotiations under this
14 section are limited to lands that are:

15 (1) Determined to be sufficiently capable of serving
16 agricultural purposes;

17 (2) Set aside to the department for agricultural or
18 agricultural-related uses by the governor through an
19 executive order; and

20 (3) Not needed by any state or county agency for any other
21 public purpose.



1 (c) In negotiating and executing a lease pursuant to this
2 section, the board shall:

3 (1) Require the appraisal of the parcel using the Uniform
4 Standards of Professional Appraisal Practice to
5 determine the rental amount, including percentage of
6 rent;

7 (2) Require the payment of a premium, computed as twenty-
8 five per cent of the annual lease rent; provided that
9 the premium to be added to the annual lease rent for
10 each year of the lease shall be equal to the number of
11 years the lessee has occupied the land; and provided
12 further that the premium period shall not exceed seven
13 years; and

14 (3) Recover from the lessee the costs of expenditures
15 required by the department to convert the parcel into
16 leasehold.

17 **§ -13 Public lands exemption.** Notwithstanding chapter
18 171, disposition of lands set aside for use pursuant to this
19 chapter shall not be subject to the prior approval of the board
20 of land and natural resources.



1 **§ -14 Rights of holders of security interests.** (a)

2 Prior board action shall be required when an institutional
3 lender acquires the lessee's interest through a judicial or
4 nonjudicial foreclosure sale, by way of assignment in lieu of
5 foreclosure, or when the institutional lender sells or causes
6 the sale of the lessee's interest in a lease by way of a
7 judicial or nonjudicial foreclosure sale. The institutional
8 lender shall convey to the board a copy of the sale or
9 assignment as recorded in the bureau of conveyances.

10 (b) Notwithstanding any other provision of this chapter,
11 for any lease that is subject to a security interest held by an
12 institutional lender who has given to the board a copy of the
13 encumbrance as recorded in the bureau of conveyances:

14 (1) If the lease is canceled for violation of any non-
15 monetary lease term or condition, or if the lease is
16 deemed terminated or rejected under bankruptcy laws,
17 the institutional lender shall be entitled to issuance
18 of a new lease in its name for a term equal to the
19 term of the lease remaining immediately prior to the
20 cancellation, termination, or rejection, with all
21 terms and conditions being the same as in the



1 canceled, terminated, or rejected lease, except any
2 liens, claims, and encumbrances that were superior to
3 the institutional lender before the cancellation,
4 termination, or rejection; provided that a lease that
5 is rejected or deemed rejected under bankruptcy law
6 shall be deemed canceled and terminated for all
7 purposes under state law;

8 (2) If the lessee's interest under a lease is transferred
9 to an institutional lender, including by reason of
10 paragraph (1), acquisition of the lessee's interest
11 pursuant to a judicial or nonjudicial foreclosure
12 sale, or an assignment in lieu of foreclosure:

13 (A) The institutional lender shall be liable for the
14 obligations of the lessee under the lease for the
15 period of time during which the institutional
16 lender is the holder of the lessee's interest;
17 provided that the institutional lender shall not
18 be liable for any obligations of the lessee
19 arising after the institutional lender has
20 assigned the lease; and



1 (B) Section -9(b)(1) and (2) shall not apply to
2 the lease or the demised land during the time the
3 institutional lender holds the lease; provided
4 that:

5 (i) For non-monetary lease violations, the
6 institutional lender shall first remedy the
7 lease terms that caused the cancellation,
8 termination, or rejection to the
9 satisfaction of the board; and

10 (ii) The new lease issued to the institutional
11 lender shall terminate one hundred twenty
12 days from the effective date of issuance, at
13 which time the institutional lender shall
14 either sell or assign the lease, and section
15 -9(b)(1) and (2) shall apply to the new
16 lease;

17 (3) If there is a delinquent loan balance secured by a
18 security interest:

19 (A) The lease shall not be canceled or terminated,
20 except if canceled by reason of the lessee's
21 default;



1 (B) No increase over and above the fair market rent,
2 based upon the actual use of the land demised and
3 subject to the use restrictions imposed by the
4 lease and applicable laws, shall be imposed or
5 become payable; and

6 (C) No lands shall be withdrawn from the lease,
7 except either by eminent domain proceedings
8 beyond the control of the board or with prior
9 written consent of the institutional lender which
10 shall not be unreasonably withheld; and

11 (4) If the lease contains any provision requiring the
12 payment of a premium to the lessor on assignment of
13 the lease, any premium shall be assessed only after
14 all amounts owing by any debt secured by a security
15 interest held by an institutional lender have been
16 paid in full.

17 (c) Ownership of both the lease and the security interest
18 by an institutional lender shall not effect or cause a merger
19 thereof, and both interests shall remain distinct and in full
20 force and effect unless the institutional lender elects in



1 writing to merge the lease and security interest with the
2 consent of the board.

3 (d) The board may include in any consent form or document
4 any provisions consistent with the intent of this section that
5 may be required to make a lease mortgageable or more acceptable
6 for mortgageability by an institutional lender.

7 (e) The rights of a purchaser, assignee, or transferee of
8 an institutional lender's security interest, including a junior
9 lien holder, shall be exercisable by the purchaser, assignee, or
10 transferee as successor in interest to the institutional lender;
11 provided that:

12 (1) The purchase, assignment, or transfer shall conform
13 with subsection (b)(4); and

14 (2) The purchase, assignment, or transfer of the rights
15 shall be reserved for and exercisable only by an
16 institutional lender.

17 Other purchasers shall not be precluded from acquiring the
18 institutional lender's security interest but shall not have
19 exercisable rights as successor in interest to the original
20 institutional lender.

21 (f) For the purposes of this section:



1 "Institutional lender" means a federal, state, or private
 2 lending institution, licensed to do business in the State, that
 3 makes loans to qualified applicants on the basis of a lease
 4 awarded for security, in whole or in part, together with any
 5 other entity that acquires all or substantially all of an
 6 institutional lender's loan portfolio.

7 "Makes loans" means lends new money or renews or extends
 8 indebtedness owing by a qualified applicant to an institutional
 9 lender, after June 30, 2006.

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

15 SECTION 2. Section 141-1, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 "**§141-1 Duties in general.** The department of agriculture
 18 shall:

- 19 (1) Gather, compile, and tabulate, from time to time,
 20 information and statistics concerning:



- 1 (A) Entomology and plant pathology: Insects, scales,
2 blights, and diseases injurious or liable to
3 become injurious to trees, plants, or other
4 vegetation, and the ways and means of
5 exterminating pests and diseases already in the
6 State and preventing the introduction of pests
7 and diseases not yet [~~here,~~] in the State; and
- 8 (B) General agriculture: Fruits, fibres, and useful
9 or ornamental plants and their introduction,
10 development, care, and manufacture or
11 exportation, with a view to introducing,
12 establishing, and fostering new and valuable
13 plants and industries;
- 14 (2) Encourage and cooperate with the agricultural
15 extension service and agricultural experiment station
16 of the University of Hawaii and all private persons
17 and organizations doing work of an experimental or
18 educational character coming within the scope of the
19 subject matter of chapters 141, 142, and 144 to 150A,
20 and avoid, as far as practicable, duplicating the work
21 of those persons and organizations;



- 1 (3) Enter into contracts, cooperative agreements, or other
2 transactions with any person, agency, or organization,
3 public or private, as may be necessary in the conduct
4 of the department's business and on [~~such~~] any terms
5 [~~as~~] the department may deem appropriate; provided
6 that the department shall not obligate any funds of
7 the State, except the funds that have been
8 appropriated to the department. Pursuant to
9 cooperative agreement with any authorized federal
10 agency, employees of the cooperative agency may be
11 designated to carry out, on behalf of the State the
12 same as department personnel, specific duties and
13 responsibilities under chapters 141, 142, and 150A,
14 and rules adopted pursuant to those chapters, for the
15 effective prosecution of pest control and animal
16 disease control and the regulation of import into the
17 State and intrastate movement of regulated articles;
- 18 (4) Secure copies of the laws of other states,
19 territories, and countries, and other publications
20 germane to the subject matters of chapters 141, 142,



1 and 144 to 150A, and make laws and publications
2 available for public information and consultation;
3 (5) Provide buildings, grounds, apparatus, and
4 appurtenances necessary for the examination,
5 quarantine, inspection, and fumigation provided for by
6 chapters 141, 142, and 144 to 150A; for the obtaining,
7 propagation, study, and distribution of beneficial
8 insects, growths, and antidotes for the eradication of
9 insects, blights, scales, or diseases injurious to
10 vegetation of value and for the destruction of
11 injurious vegetation; and for carrying out any other
12 purposes of chapters 141, 142, and 144 to 150A;
13 (6) Formulate and recommend to the governor and
14 legislature additional legislation necessary or
15 desirable for carrying out the purposes of chapters
16 141, 142, and 144 to 150A;
17 (7) Publish at the end of each year a report of the
18 expenditures and proceedings of the department and of
19 the results achieved by the department, together with
20 other matters germane to chapters 141, 142, and 144 to
21 150A and that the department may deem proper;



1 (8) Administer a program of agricultural planning and
2 development, including the formulation and
3 implementation of general and special plans, including
4 but not limited to the functional plan for
5 agriculture; administer the planning, development, and
6 management of the agricultural park program; plan,
7 construct, operate, and maintain the state irrigation
8 water systems; plan, design, construct, operate,
9 manage, maintain, repair, demolish, and remove
10 infrastructure or improvements on any lands of which
11 the department has jurisdiction; review, interpret,
12 and make recommendations with respect to public
13 policies and actions relating to agricultural land and
14 water use; assist in research, evaluation,
15 development, enhancement, and expansion of local
16 agricultural industries; and serve as liaison with
17 other public agencies and private organizations for
18 the above purposes. In the foregoing, the department
19 shall act to conserve and protect agricultural lands
20 and irrigation water systems, promote diversified
21 agriculture, increase agricultural self-sufficiency,



1 and ensure the availability of agriculturally suitable
2 lands; and
3 (9) Manage, administer, and exercise control over any
4 public lands, as defined under section 171-2, that are
5 designated important agricultural lands pursuant to
6 section 205-44.5, including but not limited to
7 establishing priorities for the leasing of these
8 public lands within the department's jurisdiction."

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

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



Report Title:

Department of Agriculture; Agricultural Enterprises;
Agricultural Enterprise Special Fund

Description:

Authorizes the department of agriculture to plan, design, construct, operate, manage, maintain, repair, demolish, and remove infrastructure on any lands under the jurisdiction of the department, to support and promote agriculture. Establishes the agricultural enterprise program. Establishes the agricultural enterprise special fund. Requires the board of agriculture to annually report an accounting of non-agricultural park lessees to the legislature. (SD1)

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

