

JAN 20 2022

A BILL FOR AN ACT

RELATING TO AQUACULTURE.

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

1 SECTION 1. The purpose of this Act is to promote the
2 State's economic development by establishing within the
3 department of agriculture, an aquacultural area lease program
4 for the purpose of identifying state facilities, state lands,
5 and state marine waters that are suitable for use as commercial
6 agricultural areas and leasing them to be used for aquaculture.

7 SECTION 2. Chapter 141, Hawaii Revised Statutes, is
8 amended by adding a new section to part I to be appropriately
9 designated and to read as follows:

10 "§141- Aquacultural area lease program. (a) There is
11 established within the department an aquacultural area lease
12 program for the purpose of identifying state facilities, state
13 lands, and state marine waters that are suitable for use as
14 aquacultural areas and authorizing the department to issue
15 commercial leases to use the areas for aquacultural purposes.
16 The department shall manage and administer the program and
17 aquacultural areas it leases in consultation with the department



1 of land and natural resources, the agribusiness development
2 corporation, and any other agency having jurisdiction over the
3 aquacultural areas.

4 (b) The program shall identify and select as aquacultural
5 areas to be leased pursuant to this section, state facilities,
6 state lands, and state marine waters that the program deems
7 suitable for commercial aquacultural purposes; provided that the
8 identification and selection process shall:

9 (1) Be subject to chapter 92, and the department shall
10 hold at least one public meeting in the community in
11 which the proposed aquacultural area is situated;

12 (2) Take into consideration comments from the department
13 of land and natural resources, agribusiness
14 development corporation, and any other agency having
15 jurisdiction over the proposed aquacultural area; and

16 (3) Be completed by June 30, 2024.

17 (c) Notwithstanding any other law to the contrary, the
18 board may lease the aquacultural areas identified for the
19 program; provided that:

20 (1) The lessee obtains all necessary federal, state, and
21 county permits to establish and conduct the proposed



1 aquacultural activities in the aquacultural area,
2 including a conservation district use permit issued by
3 the board of land and natural resources pursuant to
4 section 183C-6 or 190D-11, as applicable, if the
5 aquacultural area includes lands within the state land
6 use conservation district or state marine waters;

7 (2) The board and the lessee enter into an aquacultural
8 area lease pursuant to this section for the lessee's
9 proposed aquacultural activities in the aquacultural
10 area;

11 (3) The lessee uses the leased aquacultural area only for
12 aquacultural activities that are approved by the
13 board, authorized by the permits obtained pursuant to
14 paragraph (1), and set forth in the lease executed
15 pursuant to paragraph (2);

16 (4) The lessee's aquacultural activities in the
17 aquacultural area does not have an adverse impact on
18 existing programs of the department or other state
19 departments or agencies, including the project
20 facility program and agricultural projects implemented
21 by the agribusiness development corporation and the



1 marine life conservation district program, shoreline
2 fisheries management area program, and the natural
3 area reserve program administered by the department of
4 land and natural resources;

5 (5) The lessee's aquacultural activities in the
6 aquacultural area does not abridge, alter, conflict
7 with, or impair konohiki fishing rights recognized in
8 chapter 187A, including the right to sublease private
9 konohiki fishing grounds for marine activities;

10 (6) The leasing of the aquacultural area does not
11 adversely impact the public's use and enjoyment of the
12 reefs in the state marine waters;

13 (7) The lessee is in compliance with all applicable
14 federal, state, and county statutes, ordinances, and
15 rules;

16 (8) The board makes a determination that the lease is for
17 commercial use; and

18 (9) Any lease entered into by the department pursuant to
19 this section shall be fully executed no later than
20 June 30, 2032.



1 (d) Leases issued by the board shall contain the following
2 terms and conditions:

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

5 (2) Each lease shall specify the aquacultural activities
6 permitted to be conducted in the aquacultural area
7 pursuant to the lease; provided that the lease may be
8 issued only for aquacultural activities that are
9 approved by the board and permitted in the permits
10 obtained pursuant to subsection (c) (1);

11 (3) Each lease shall specify an annual rent set by the
12 board for the leased aquacultural area. The basic
13 rental charged in the lease may be supplemented by
14 royalty payments;

15 (4) Leases may specify that failure of the lessee to
16 perform substantially the activities for which the
17 lease was granted shall constitute grounds for
18 revocation of the lease and forfeiture to the State of
19 all structures and all aquatic plants or animals
20 cultivated, in and upon the leased area;



1 (5) Each lease shall require that the lessee execute a
2 bond conditioned upon the substantial performance of
3 the activities described in the lease. The amount of
4 the bond so executed shall be appropriate to the size,
5 scale, and risk of the activity for which the lease is
6 granted, and shall be sufficient to protect the public
7 interest in the removal of all structures and all
8 aquatic plants or animals cultivated, as well as to
9 restore or remediate the facilities, lands, and waters
10 to the satisfaction of the department in and upon the
11 leased aquacultural areas, if the lease is forfeited
12 for nonperformance or the board requires the removal
13 or eradication of aquatic plants or animals pursuant
14 to paragraph (11);

15 (6) Each lease shall specify that if a lessee abandons a
16 leased area, the board may order the removal or sale
17 at public auction of all improvements, assets, aquatic
18 plants or animals, and equipment remaining in and upon
19 the leased area, and shall transmit to the state
20 general fund the entire amount received from any
21 public auction and any proceeds received from the



1 lessee's performance bond. Alternatively, the board
2 may permit the use of the improvements, assets, plants
3 or animals, and equipment for purposes which benefit
4 the general public;

5 (7) Each lease shall specify that the aquatic plants or
6 animals described in the lease to be cultivated and
7 contained within the leased area are the exclusive
8 harvest of the lessee; provided that any plant or
9 animal that escapes from the leased area and is not
10 clearly identifiable as the property of the lessee,
11 shall become common property and may be taken or
12 caught by any person, subject to the fishing laws of
13 the State, without violating the rights of the lessee;

14 (8) Each lease shall specify that:

15 (A) The lessee is responsible for the removal of any
16 cultivated aquatic plants or animals found
17 outside the leased area but within state
18 facilities, state lands, or state marine waters,
19 if removal is required to protect the environment
20 or public health and safety, and removal is
21 demandd by the board;



1 (B) The lessee is solely responsible for all costs of
2 removal of such aquatic plants or animals; and

3 (C) If action must be taken by the department to
4 eradicate escaped aquatic plants or animals, all
5 costs of eradication shall be borne by the
6 lessee; provided that the costs borne by the
7 lessee shall be no greater than the amount of the
8 bond required under paragraph (5);

9 (9) Leases may specify that the lessee shall construct and
10 maintain gates, openings, or lanes at reasonable
11 distances from one another throughout a leased area
12 that includes surface waters and in which any type of
13 enclosure is an obstacle to free navigation, unless
14 public transit in or through the enclosed waters will
15 cause undue interference with the operation being
16 conducted by the lessee within the leased area;

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

18 (A) All lessees mark off the areas under lease by
19 appropriate ranges, monuments, stakes, buoys,
20 fences, or any other devices placed so that they



1 do not interfere unnecessarily with navigation
2 and other traditional uses of the water surface;

3 (B) All lessees identify the area under lease and the
4 names of the lessees on signs appropriately
5 placed pursuant to specifications established by
6 the board; and

7 (C) All limitations upon the use by the public of an
8 aquacultural area under lease shall be clearly
9 posted by the lessee pursuant to specifications
10 established by the board;

11 (11) Leases shall specify that if the chairperson finds or
12 has reasonable cause to believe that an activity
13 conducted by the lessee in or upon the area described
14 in the lease is causing an immediate danger to human
15 or marine life, or the environment of the aquacultural
16 and surrounding areas, the chairperson may direct a
17 temporary or permanent suspension of research,
18 commercial, or stocking activities in the affected
19 area. The chairperson shall then notify the board.
20 The board shall immediately order the lessee or
21 lessees affected by such notice to show cause why



1 their activities should not be terminated, or why any
2 structures, cultivated aquatic plants or animals, or
3 equipment should not be removed from the aquacultural
4 area. The board shall proceed to hold a public
5 hearing and issue its order with respect to such
6 hearing within a reasonable period. In its order
7 following the hearing, the board may direct a
8 temporary or permanent suspension of commercial or
9 research activities in the affected area, removal of
10 equipment or cultivated aquatic plants or animals, or
11 such other measures as the board deems appropriate for
12 protection of human or marine life and environment of
13 the aquacultural area, including forfeiture to and
14 destruction by the State of any aquatic plant or
15 animal species;

16 (12) Each lease shall specify that the lease may be
17 assigned in whole or in part, or amended, only if the
18 board determines that such assignment or amendment is
19 in the public interest and meets the provisions of
20 this section and consents to the assignments. The



1 board may consent to the mortgage of a lease pursuant
2 to section 171-22;

3 (13) Each lease shall specify that the lease may be revoked
4 by the board for violation of any lease provision.

5 The board shall deliver a written notice of the breach
6 or default of any lease agreement by registered or
7 certified mail to the party in default and to each
8 holder of record having any security interest in the
9 state marine waters covered by or subject to the
10 lease, making demand upon the party to cure or remedy
11 the breach or default within sixty days from the date
12 of receipt of the notice. Upon failure of the party
13 to cure or remedy the breach or default within sixty
14 days from the date of receipt of the notice, or within
15 such additional period the board may allow for good
16 cause, the board may revoke the lease;

17 (14) Each lease shall contain a statement describing the
18 degree of exclusivity or access to the site by the
19 public that will be based on an analysis of the user
20 listing and descriptions provided in the application,
21 and comments made by the public and in consideration



1 of, but not limited to the following: compatibility
2 of the operation with existing uses, perceived
3 liability to the lessee and the public, and perceived
4 risk to the lessee's investment; and

5 (15) Each lease may include other terms and conditions as
6 the board deems advisable to effectuate the purposes
7 of the state constitution and this section.

8 (e) The chairperson or chairperson's authorized agents
9 shall have the authority to enter and inspect any and all areas
10 leased by the board for the purpose of determining compliance
11 with the terms and provisions of any lease issued under this
12 section.

13 (f) A person who wishes to obtain a lease for an
14 aquacultural area pursuant to this section shall request an
15 aquacultural area lease from the board. Upon receipt of a
16 completed application and authorization of a lease, the board
17 shall:

18 (1) Negotiate with and grant a lease to the applicant; or

19 (2) Conduct a public auction and grant the lease to the
20 highest qualified bidder.



1 Public auctions shall be conducted in accordance with
2 chapter 171. If an auction is held and the applicant submitting
3 a completed application is not the highest qualified bidder, the
4 board shall require the highest qualified bidder to indemnify
5 the applicant for all legitimate costs incurred in the
6 preparation of any environmental assessment or environmental
7 impact statement included in the application pursuant to chapter
8 343 and the rules adopted thereunder. In establishing and
9 following internal procedures for lease applications, the board
10 shall attempt to minimize costs to those applicants submitting
11 completed applications. The board shall not revoke or modify
12 its approval of an application in a way that invalidates,
13 impairs, limits, or affects, directly or indirectly, in whole or
14 in part, the rights of a lessee as set forth in the lease
15 granted to the lessee pursuant to this section.

16 (g) The program may use the moneys in the aquaculture
17 development special fund established by section 141-2.7 to carry
18 out the purposes of this section, including hiring the necessary
19 employees, specialists, and consultants. The revenues obtained
20 from the leasing of aquacultural areas pursuant to this section
21 shall be deposited into the aquaculture development special



1 fund; provided that the portion of revenues subject to chapter
2 10, shall be deposited into the public land trust fund as
3 provided by law.

4 (h) Nothing in this section shall preclude the department
5 from working with and receiving assistance from any other
6 department or agency in carrying out the purposes of this
7 section. If state facilities, state lands, and state marine
8 waters under the control and management of other agencies are
9 required by the department for purposes of enforcing this
10 section, the agency having the control and management of those
11 required facilities, lands, and waters, upon request by the
12 department, may lease the lands and waters to the department
13 upon such terms and conditions as may be agreed to by the
14 parties. Notwithstanding the foregoing, no public lands shall
15 be leased to the department if the lease would impair any
16 covenant between the State or any county, or any department or
17 board thereof, and the holders of bonds issued by the State or
18 the county, department, or board.

19 (i) Any person who conducts, in an aquacultural area, any
20 aquacultural activity that is not permitted by a lease granted
21 to that person by the board, or who conducts these activities in



1 or upon aquacultural areas without having obtained the approval
2 of the board, shall be fined not more than \$10,000 for each
3 separate offense. Each day of violation shall constitute a
4 separate offense. Any action taken to impose or collect the
5 penalty provided for in this section shall be considered a civil
6 action.

7 (j) Any person who wilfully or recklessly damages,
8 disturbs, or interferes with any aquacultural activity that has
9 been permitted in a lease granted by the board, or who wilfully
10 or recklessly damages, disturbs, interferes with, takes, or
11 possesses any improvements, assets, aquatic plants or animals,
12 or equipment in an aquacultural area leased to a person, without
13 the permission of that person, shall be subject to civil
14 proceedings initiated by any person damaged thereby,
15 notwithstanding the result in any criminal proceedings commenced
16 under subsection (k).

17 (k) Any person who negligently or wilfully damages,
18 disturbs, or interferes with any aquacultural activity that has
19 been permitted in a lease granted by the board, or who
20 negligently or wilfully damages, disturbs, interferes with,
21 takes, or possesses any improvements, assets, aquatic plants or



1 animals, or equipment in an aquacultural area leased to a
2 person, without the permission of that person, shall be treated
3 in accordance with the applicable provisions of chapter 708.

4 (l) Nothing in this section shall be held in any way to
5 interfere or conflict with any vested rights under or arising
6 out of any grant, lease, or license of or concerning any
7 government lands or water rights, or rights-of-way; nor shall
8 anything in this section be construed to change any rights in or
9 concerning any water upon or flowing from or through any land
10 set apart or surrendered as a forest reserve, or as depriving or
11 limiting any state officer from exercising any existing power or
12 authority or any power that may hereafter be created to deal
13 with such water or water rights, or rights-of-way.

14 (m) The department shall adopt rules to effectuate the
15 purposes of this section in accordance with chapter 91 and
16 subject to approval by the board.

17 (n) As used in this section, unless the context clearly
18 requires otherwise:

19 "Agency" means any federal, state, local, or foreign
20 government or any entity of any such government.



1 "Aquacultural area" means state facilities, state lands, or
2 state marine waters identified by the program as being suitable
3 for commercial aquaculture and may include public lands
4 transferred from the department of land and natural resources to
5 the department as non-agricultural park lands pursuant to
6 chapter 166E; provided that "aquacultural areas" shall not
7 include facilities, lands, or waters designated as being
8 necessary for national defense purposes, as determined by the
9 department of land and natural resources in consultation with
10 the appropriate federal agencies.

11 "Aquaculture" means the propagation, cultivation, or
12 farming of aquatic plants and animals in controlled or selected
13 environments for commercial purposes, including research,
14 stocking, aquaponics, or any growing of plants or animals with
15 aquaculture effluents.

16 "Board" means the board of agriculture of the department.

17 "Chairperson" means the chairperson of the board of
18 agriculture.

19 "Commercial lease" means a lease of an aquacultural area to
20 conduct aquacultural activities engaged in for profit.

21 "Department" means the department of agriculture.



1 "Facility" means a building or buildings or similar
2 structure owned or leased by, or otherwise under the
3 jurisdiction of, an agency.

4 "Lease" means the right to possess and use an aquacultural
5 area pursuant to this section for a term of years.

6 "Lessee" means the holder of a valid aquacultural area
7 lease granted by the board pursuant to this section.

8 "Program" means the aquacultural area lease program.

9 "Public lands" has the same meaning as defined in section
10 171-2; provided that "public lands" include lands to which the
11 department holds title by way of foreclosure, voluntary
12 surrender, or otherwise, to recover moneys loaned or to recover
13 debts otherwise owed the department under chapter 167.

14 "State lands" includes all public and other lands owned or
15 in possession, use and control of the then Territory of Hawaii
16 or the State of Hawaii, or any of its agencies.

17 "State marine waters" means all waters of the State,
18 including the water column, water surface, and state submerged
19 lands, extending from the upper reaches of the wash of the waves
20 on shore seaward to the limit of the State's police power and



1 management authority, including the United States territorial
2 sea, notwithstanding any law to the contrary.

3 "Water column" means the vertical extent of marine waters,
4 including the surface, above submerged lands."

5 SECTION 3. Section 26-16, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) The department shall:

8 (1) Promote the conservation, development, and utilization
9 of agricultural resources in the State;

10 (2) Assist the farmers of the State and any others engaged
11 in agriculture by research projects, dissemination of
12 information, crop and livestock reporting service,
13 market news service, and any other means of improving
14 the well-being of those engaged in agriculture and
15 increasing the productivity of the lands;

16 (3) Administer the programs of the State relating to
17 animal husbandry, entomology, farm credit, development
18 and promotion of agricultural products and markets,
19 and the establishment and enforcement of the rules on
20 the grading and labeling of agricultural products;

21 [~~and~~]



(4) Administer the aquaculture program under section
141-2.5 ~~[]~~; and

(5) Administer the aquacultural area lease program under
section 141- ."

SECTION 4. Section 141-2.7, Hawaii Revised Statutes, is
amended to read as follows:

"~~[]~~ §141-2.7 ~~[]~~ **Aquaculture development special fund.** (a)
There is established in the state treasury the aquaculture
development special fund into which shall be deposited:

(1) Appropriations from the legislature;

(2) Moneys collected as fees for special microbiological
and histological procedures and expert aquaculture-
related services;

(3) Moneys collected from the sale of any item related to
aquaculture development that is purchased from the
department;

(4) Moneys directed to the aquaculture development program
from any other sources, including but not limited to
grants, gifts, and awards; ~~[and]~~



1 (5) Moneys collected as fees or lease rent under the
2 aquacultural area lease program pursuant to section
3 141- , notwithstanding section 190D-33; and

4 ~~[(+5)]~~ (6) Moneys derived from interest, dividend, or other
5 income from the above sources.

6 (b) Moneys in the aquaculture development special fund
7 shall be used to:

8 (1) Implement the aquatic disease management programs and
9 activities of the department, including provision of
10 state funds to match federal grants; ~~[and]~~

11 (2) Support research and development programs and
12 activities relating to the expansion of the state
13 aquaculture industry. Research and development
14 programs and activities funded under this paragraph
15 may be conducted by department personnel or through
16 contracts with the University of Hawaii or other
17 qualified persons~~[-]~~; and

18 (3) Implement the aquacultural area lease program pursuant
19 to section 141- , including:

20 (A) Hiring the necessary employees, specialists, and
21 consultants to carry out the program; and



1 (B) Paying lease rents to agencies under the
2 aquacultural areas program pursuant to section
3 141- (h) ."

4 SECTION 5. Section 190D-2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§190D-2 Findings and purpose.** Article XI of the
7 constitution of the State of Hawaii relating to the
8 conservation, control, and development of resources, provides in
9 section 6 that the State shall have the power to manage and
10 control the marine, seabed, and other resources located within
11 the boundaries of the State, including its archipelagic waters,
12 and reserves to the State all such rights outside state
13 boundaries not specifically limited by federal or international
14 law.

15 The legislature finds that the State's marine waters offer
16 the people of Hawaii sources of energy, minerals, food, and
17 usable space. The legislature further finds that the proper
18 management and development of these ocean resources require
19 defined rights of usage and tenure.

20 The purpose of this chapter is to establish procedures for
21 the leasing of state marine waters and to guarantee property



1 rights and protection for any activities approved under these
2 procedures. Unless otherwise provided, the provisions of this
3 chapter shall not apply to leases administered by the department
4 of agriculture for the aquacultural area lease program pursuant
5 to section 141- ."

6 SECTION 6. Section 190D-33, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§190D-33 Revenues. The revenues obtained from the
9 leasing of state marine waters pursuant to this chapter shall be
10 deposited into the special land and development fund to be used
11 for planning, research, and development of the aquaculture
12 industry; provided that the portion of revenues subject to
13 chapter 10, shall be deposited into the public land trust fund
14 as provided by law[-]; provided further that revenues obtained
15 from the leasing of state marine waters and state submerged
16 lands as aquacultural areas pursuant section 141- shall be
17 deposited into the aquaculture development special fund
18 established under section 141-2.7."

19 SECTION 7. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or



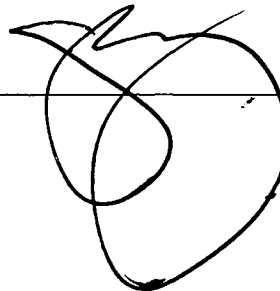
1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

4 SECTION 8. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 9. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 10. This Act shall take effect upon its approval.

10
INTRODUCED BY: _____

A handwritten signature in black ink, consisting of a stylized, cursive script, is written over a horizontal line.

S.B. NO. 2174

Report Title:

Aquaculture; Aquacultural Area Lease Program; Department of Agriculture; State Facilities; State Lands; State Marine Waters; Ocean and Submerged Lands

Description:

Establishes within the Department of Agriculture, an Aquacultural Area Lease Program for the purpose of identifying state facilities, state lands, and state marine waters that are suitable for use as commercial agricultural areas and leasing them to be used for aquaculture. Allows agencies having control and management of identified aquacultural areas to lease the facilities, lands, and waters to the Department of Agriculture for the purposes of the Act. Allows the program to use the moneys in the Aquaculture Development Special Fund to carry out the purposes of the Act and requires the revenues obtained from aquacultural area leases to be deposited into the special fund. Imposes penalties and civil and criminal liabilities. Exempts the program from being subject to the Hawaii Ocean and Submerged Lands Leasing Act.

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

