
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) The department shall hold at least one public meeting
10 in the community in which the proposed aquacultural
11 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 department 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



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

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

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

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



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

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

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

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

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

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



1 (d) Leases issued by the department shall contain the
2 following 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 department and permitted in the
10 permits obtained pursuant to subsection (c) (1);

11 (3) Each lease shall specify an annual rent set by the
12 department for the leased aquacultural area. The
13 basic rental charged in the lease may be supplemented
14 by 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 department requires the
13 removal or eradication of aquatic plants or animals
14 pursuant to paragraph (11);

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



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



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 department; 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 department;

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
20 department. The department shall immediately order
21 the lessee or lessees affected by such notice to show



1 cause why their activities should not be terminated,
2 or why any structures, cultivated aquatic plants or
3 animals, or equipment should not be removed from the
4 aquacultural area. The department shall proceed to
5 hold a public hearing and issue its order with respect
6 to such hearing within a reasonable period. In its
7 order following the hearing, the department may direct
8 a 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 department deems
12 appropriate for protection of human or marine life and
13 environment of the aquacultural area, including
14 forfeiture to and destruction by the State of any
15 aquatic plant or 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 department determines that such assignment or
19 amendment is in the public interest and meets the
20 provisions of this section and consents to the



1 assignments. The department may consent to the
2 mortgage of a lease pursuant to section 171-22;

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

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



and comments made by the public and in consideration
of, but not limited to the following: compatibility
of the operation with existing uses, perceived
liability to the lessee and the public, and perceived
risk to the lessee's investment; and

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

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

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

- (1) Negotiate with and grant a lease to the applicant; or
(2) Conduct a public auction and grant the lease to the
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 department shall require the highest qualified bidder to
5 indemnify 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
10 department shall attempt to minimize costs to those applicants
11 submitting completed applications. The department shall not
12 revoke or modify its approval of an application in a way that
13 invalidates, impairs, limits, or affects, directly or
14 indirectly, in whole or in part, the rights of a lessee as set
15 forth in the lease granted to the lessee pursuant to this
16 section.

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



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

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

20 (i) Any person who conducts, in an aquacultural area, any
21 aquacultural activity that is not permitted by a lease granted



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

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

18 (k) Any person who negligently or wilfully damages,
19 disturbs, or interferes with any aquacultural activity that has
20 been permitted in a lease granted by the department, or who
21 negligently or wilfully damages, disturbs, interferes with,



1 takes, or possesses any improvements, assets, aquatic plants or
2 animals, or equipment in an aquacultural area leased to a
3 person, without the permission of that person, shall be treated
4 in accordance with the applicable provisions of chapter 708.

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

15 (m) The department shall adopt rules to effectuate the
16 purposes of this section in accordance with chapter 91.

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

18 "Department" means the department of agriculture.

19 "Chairperson" means the chairperson of the board of
20 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 department 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]~~



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

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

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

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

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

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

(A) Hiring the necessary employees, specialists, and
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.



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. (SD1)

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