

JAN 21 2022

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 establishes 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 the department of
4 agriculture's lands. The department of agriculture encourages
5 activities including the planning, design, construction,
6 operation, and management of agricultural enterprises to ensure
7 the economic viability of agricultural operations, and allows
8 lessees to do the same. Therefore, the legislature finds that
9 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 by
12 establishing 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



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

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

"Agricultural activities" include:

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

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

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

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

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

"Aquacultural activities" means the farming or ranching of
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, to support and promote agriculture, the department may:

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

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

20 § -4 Transfer and management of agricultural enterprise
21 lands and agricultural enterprises; agricultural enterprise



1 program. (a) Upon mutual agreement and approval by the board
2 and the board of land and natural resources:

3 (1) The department may accept from the department of land
4 and natural resources the transfer and management of
5 certain qualifying agricultural enterprise lands and
6 agricultural enterprises; and

7 (2) Certain assets, including position counts, related to
8 the management of existing encumbered and unencumbered
9 agricultural enterprise lands and agricultural
10 enterprises, and related facilities, shall be
11 transferred to the department.

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



1 agricultural enterprise program shall include the following
2 conditions pertaining to the transfer of encumbered or
3 unencumbered agricultural enterprise lands and agricultural
4 enterprises:

5 (1) At the time of transfer:

6 (A) The lessee or permittee shall be in full
7 compliance with the existing lease or permit;

8 (B) The lessee or permittee shall not be in arrears
9 in the payment of taxes, rents, or other
10 obligations owed to the State or any county; and

11 (C) The lessee's or permittee's agricultural
12 operation shall be economically viable as
13 determined by the board;

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



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

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

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

§ -6 Extension of qualified and encumbered agricultural enterprise lands and agricultural enterprises. Notwithstanding chapter 171, the board shall establish criteria and rules to allow the cancellation, renegotiation, and extension of 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 Disposition.** (a) Notwithstanding any provision of
11 this chapter and chapter 171 to the contrary, the department may
12 dispose of the following by negotiation, drawing of lots,
13 conversion, or public auction:

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

16 (2) Other lands and enterprises under the jurisdiction of
17 the department pursuant to section -9.

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



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

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

(2) Each lessee shall derive a major portion of the lessee's total annual income earned from the lessee's activities on the premises; provided that this restriction shall not apply if:

(A) Failure to meet the restriction results from mental or physical disability of the lessee or the loss of the lessee's spouse; or

(B) The premises are fully used to support or promote the agricultural or aquacultural activities for which the disposition was granted;

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

(4) The board shall:

(A) Determine the specific uses for which the disposition is intended;



- 1 (B) Parcel the land into minimum size economic units
- 2 sufficient for the intended uses;
- 3 (C) Make, or require the lessee to make, improvements
- 4 that are necessary to achieve the intended uses;
- 5 (D) Set the upset price or lease rent based upon an
- 6 appraised evaluation of the property value,
- 7 adjustable to the specified use of the lot;
- 8 (E) Set the term of the lease, which shall not be
- 9 less than fifteen years or more than sixty-five
- 10 years, including any extension granted for
- 11 mortgage lending or guarantee purposes; and
- 12 (F) Establish other terms and conditions that it
- 13 deems necessary, including restrictions against
- 14 alienation and provisions for withdrawal by the
- 15 board; and
- 16 (5) Any transferee, assignee, or sublessee of an
- 17 agricultural enterprise lease shall first qualify as
- 18 an applicant under this chapter. For the purpose of
- 19 this paragraph, any transfer, assignment, sale, or
- 20 other disposition of any interest, excluding a
- 21 security interest, by any legal entity that holds an



1 agricultural enterprise lease shall be treated as a
2 transfer of the agricultural enterprise lease and
3 shall be subject to the approval of the board,
4 reasonable terms and conditions consistent with this
5 chapter, and rules adopted pursuant to this chapter.
6 No transfer shall be approved by the board if the
7 disposition of the stock or assets or other interest
8 of the applicant would result in the failure of the
9 person to qualify for an agricultural enterprise
10 lease.

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

17 (d) The board may issue easements, licenses, permits, and
18 rights-of-entry for uses that are consistent with the purposes
19 for which the lands were set aside or are otherwise subject to
20 the authority of the department pursuant to section -9.



1 § -9 Authority to plan, design, develop, and manage
2 agricultural enterprise lands and agricultural enterprises. The
3 department, or its lessees subject to the department's approval,
4 may plan, design, develop, and manage agricultural enterprise
5 lands and agricultural enterprises on:

6 (1) Public lands set aside by executive order pursuant to
7 section 171-11 for use as agricultural enterprise
8 lands and agricultural enterprises;

9 (2) Other lands with the approval of the board that may be
10 subject to a joint venture partnership agreement
11 pursuant to section -10; and

12 (3) Lands acquired by the department by way of
13 foreclosure, voluntary surrender, or otherwise
14 pursuant to section 155-4(11).

15 § -10 Agricultural enterprise lands and agricultural
16 enterprise development. On behalf of the State or in
17 partnership with a federal agency, county, or private party, the
18 department may develop agricultural enterprise lands and
19 agricultural enterprises.

20 § -11 Lease negotiation. (a) The department may
21 negotiate and enter into leases with any person who:



(1) Holds a revocable permit for agricultural purposes;

(2) Has formerly held an agricultural lease or a holdover lease of public land that expired within the last ten years and has continued to occupy the land; or

(3) Is determined by the department to have a beneficial impact on agriculture;

provided that the department shall notify in writing those eligible for lease negotiations under this section and shall inform the applicants of the terms, conditions, and restrictions provided by this section.

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

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

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



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

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

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

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

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

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



1 § -12 Public lands exemption. Notwithstanding chapter
2 171, disposition of lands set aside for use pursuant to this
3 chapter shall not be subject to the prior approval of the board
4 of land and natural resources.

5 § -13 Rights of holders of security interests. (a)
6 Prior board action shall be required when an institutional
7 lender acquires the lessee's interest through a foreclosure
8 sale, judicial or nonjudicial, or by way of assignment in lieu
9 of foreclosure, or when the institutional lender sells or causes
10 the sale of the lessee's interest in a lease by way of a
11 foreclosure sale, judicial or nonjudicial. The institutional
12 lender shall convey to the board a copy of the sale or
13 assignment as recorded in the bureau of conveyances.

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

18 (1) If the lease is canceled for violation of any non-
19 monetary lease term or condition, or if the lease is
20 deemed terminated or rejected under bankruptcy laws,
21 the institutional lender shall be entitled to issuance



1 of a new lease in its name for a term equal to the
2 term of the lease remaining immediately prior to the
3 cancellation, termination, or rejection, with all
4 terms and conditions being the same as in the
5 canceled, terminated, or rejected lease, except only
6 for the liens, claims, and encumbrances, if any, that
7 were superior to the institutional lender before the
8 cancellation, termination, or rejection; provided that
9 a lease that is rejected or deemed rejected under
10 bankruptcy law shall be deemed canceled and terminated
11 for all purposes under state law;

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

17 (A) The institutional lender shall be liable for the
18 obligations of the lessee under the lease for the
19 period of time during which the institutional
20 lender is the holder of the lessee's interest;
21 provided that the institutional lender shall not



1 be liable for any obligations of the lessee
2 arising after the institutional lender has
3 assigned the lease; and

4 (B) Section -8(b)(1) and (2) shall not apply to
5 the lease or the demised land during the time the
6 institutional lender holds the lease; provided
7 that:

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

13 (ii) The new lease issued to the institutional
14 lender shall terminate one hundred twenty
15 days from the effective date of issuance, at
16 which time the institutional lender shall
17 either sell or assign the lease and section
18 -8(b)(1) and (2) shall apply to the new
19 lease;

20 (3) If there is a delinquent loan balance secured by a
21 security interest:



1 (A) The lease shall not be canceled or terminated,
2 except for cancellation by reason of default of
3 the lessee;

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

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

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

20 (c) Ownership of both the lease and the security interest
21 by an institutional lender shall not effect or cause a merger



1 thereof, and both interests shall remain distinct and in full
2 force and effect unless the institutional lender elects in
3 writing to merge the lease and security interest with the
4 consent of the board.

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

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

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

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

19 Other purchasers shall not be precluded from acquiring the
20 institutional lender's security interest but shall not have



1 exercisable rights as successor in interest to the original
2 institutional lender.

3 (f) For the purposes of this section:

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

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

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

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

20 "**§141-1 Duties in general.** The department of agriculture
21 shall:



1 (1) Gather, compile, and tabulate, from time to time,
2 information and statistics concerning:

3 (A) Entomology and plant pathology: Insects, scales,
4 blights, and diseases injurious or liable to
5 become injurious to trees, plants, or other
6 vegetation, and the ways and means of
7 exterminating pests and diseases already in the
8 State and preventing the introduction of pests
9 and diseases not yet ~~[here,]~~ in the state; and

10 (B) General agriculture: Fruits, fibres, and useful
11 or ornamental plants and their introduction,
12 development, care, and manufacture or
13 exportation, with a view to introducing,
14 establishing, and fostering new and valuable
15 plants and industries;

16 (2) Encourage and cooperate with the agricultural
17 extension service and agricultural experiment station
18 of the University of Hawaii and all private persons
19 and organizations doing work of an experimental or
20 educational character coming within the scope of the
21 subject matter of chapters 141, 142, and 144 to 150A,



1 and avoid, as far as practicable, duplicating the work
2 of those persons and organizations;

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



germane to the subject matters of chapters 141, 142,
and 144 to 150A, and make laws and publications
available for public information and consultation;

(5) Provide buildings, grounds, apparatus, and
appurtenances necessary for the examination,
quarantine, inspection, and fumigation provided for by
chapters 141, 142, and 144 to 150A; for the obtaining,
propagation, study, and distribution of beneficial
insects, growths, and antidotes for the eradication of
insects, blights, scales, or diseases injurious to
vegetation of value and for the destruction of
injurious vegetation; and for carrying out any other
purposes of chapters 141, 142, and 144 to 150A;

(6) Formulate and recommend to the governor and
legislature additional legislation necessary or
desirable for carrying out the purposes of chapters
141, 142, and 144 to 150A;

(7) Publish at the end of each year a report of the
expenditures and proceedings of the department and of
the results achieved by the department, together with



1 other matters germane to chapters 141, 142, and 144 to
2 150A and that the department may deem proper;
3 (8) Administer a program of agricultural planning and
4 development, including the formulation and
5 implementation of general and special plans, including
6 but not limited to the functional plan for
7 agriculture; administer the planning, development, and
8 management of the agricultural park program; plan,
9 construct, operate, and maintain the state irrigation
10 water systems; plan, design, construct, operate,
11 manage, maintain, repair, demolish, and remove
12 infrastructure or improvement on any lands of which
13 the department has jurisdiction; review, interpret,
14 and make recommendations with respect to public
15 policies and actions relating to agricultural land and
16 water use; assist in research, evaluation,
17 development, enhancement, and expansion of local
18 agricultural industries; and serve as liaison with
19 other public agencies and private organizations for
20 the above purposes. In the foregoing, the department
21 shall act to conserve and protect agricultural lands



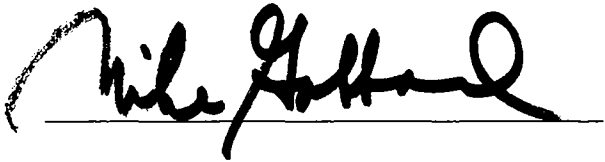
1 and irrigation water systems, promote diversified
2 agriculture, increase agricultural self-sufficiency,
3 and ensure the availability of agriculturally suitable
4 lands; and

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

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

14
INTRODUCED BY



S.B. NO. 2947

Report Title:

Department of Agriculture; Agricultural Enterprises

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.

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

