

**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**PHYLLIS SHIMABUKURO-GEISER**  
Chairperson, Board of Agriculture

**MORRIS ATTA**  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON WATER AND LAND**

**FEBRUARY 17, 2022  
8:30 A.M.**

**VIA VIDEOCONFERENCE**

**HOUSE BILL NO. 1993, HD1  
RELATING TO AGRICULTURAL LEASES**

Chairperson Tarnas and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1993, HD1. This bill changes certain state leasing statutes by seeking to maximize the benefit of Hawaii Department of Agriculture (HDOA) for disposition and use of Non-Agricultural Parks lands and to help the State achieve its economic and food production goals. The Department has strong concerns regarding unintended adverse impacts of the proposed changes and respectfully opposes this measure.

As the primary overseer of State agricultural land leases, the Department has major concerns regarding several of the proposed amendments. In its laudable attempt to address the need to increase the availability of affordable agricultural land for new or beginning farmers, reclaim lands that are not sufficiently productive, and to recapture any windfalls from transfers, this bill creates new mandates that are not supportive or appropriate for the vast majority of the Department's lessees.

One of the Department's primary missions is to promote the growth of diversified agriculture. Unlike other state agencies, as a mission directed agency, the Department is not required to apply the "highest and best use" or "prevailing market rate" criteria for determining lease rent. As such, our priority is to provide the best odds for a successful farming operation, not to maximize rental income. The measure's mandate for reliance on prevailing market rate in determining lease in the disposition process limits and conflicts with the Department's discretion and efforts to support the agricultural industry.

This measure's public auction requirement in the offering for leasing in the event of extension requests also diminishes the Department's discretionary authority to determine the most appropriate means for offering dispositions based on the unique



circumstances and characteristics of specific parcels. The Department notes that in over two decades of leasing, it has received only one request for a public auction. Historically, our primary method of disposition is negotiation has been a sealed bid process that includes and eligibility screening for qualified applicants. Each qualified applicant is requested to submit their best offer in a sealed envelope that is opened and recorded on a specified date and time. This process prevents “heat of the moment” overbidding and putting the highest bidder in a financial bind from the onset of their tenure on the land. The process enables the applicant to calculate their best offer in a far less emotional environment by objectively reviewing their business plan and making the best, financially sensible offer their plan can support. We strongly feel that this has been and continues to be the fairest method of disposition for a vast majority of our lands.

The proposed reduction of the maximum term of a lease to thirty-five years and limitation of any extension to not more than fifteen years poses serious challenges and disincentives for lessees. During the years of public discussions leading to the adoption of Act 90, (2003), which established HRS Chapter 166E, HRS, one of the most popular requests from farmers was to maximize the term of the lease. This allows and encourages a lessee to continue to maintain and invest in improvements to the land and their farms by securing long term loans and facilitates succession planning as may be appropriate. In response to the outcry of the farming community, the Legislature, in its wisdom, decided to replicate the framework of the Public Lands law in Chapter 171, HRS, and set the maximum term of the lease at sixty-five years. The same rationale applies to lease extensions. Often, for the reasons previously listed or other reasons, legitimate requests are made for extensions longer than fifteen years if available. These requests are always vetted by the BOA for credibility, feasibility, and appropriateness, prior to approval.

While the Department agrees that speculation in affordable state land that results in a windfall for lessees must not occur, caution is advisable when a farmer is transferring his land asset, namely leased state lands, as part of a larger sale of his farming business. The value of the leasehold asset is usually significantly less than the total sales value of the transaction but is often mistakenly treated as synonymous. Setting limitations on a farmer’s ability to profit from lease transfers may ultimately discourage existing legitimate farmers from maximizing their business potential, particularly in the years toward the expiration of the lease term. Like any other business, a successful farm has far more financial value than the depreciated value of its physical assets. The true value of any business is the value of what’s being produced, contracts to buy the goods or services, and its operational efficiency and expertise. This difference represents the “sweat equity” that is put into the business. The successful sale of a farming business recognizes and rewards the farmer for the hard work, time, and effort put into making it profitable. The BOA reviews and considers all of these factors when considering approval of extension requests.

Building an established and successful farm takes years of planning, investments, sacrifice, and hard work. The proposed changes, as written, will adversely impact farming business operations by placing limitations that would restrict growth and

overall success and disincentivize the continued investment in time, money, and effort needed to maintain farming operations properly on leases nearing their expiration.

The Department respectfully requests that this measure be held.

Thank you for the opportunity to testify.

**HB-1993-HD-1**

Submitted on: 2/16/2022 12:42:17 PM

Testimony for WAL on 2/17/2022 8:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Brian Kau	Dept of Ag - Ag Resource Mgt Division	Oppose	Yes

Comments:

I am available to answer questions on behalf of the Department of Agriculture.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
House Committee on Water and Land  
Thursday, February 17, 2022 at 8:30 a.m.

By  
Nicholas Comerford, Dean  
College of Tropical Agriculture and Human Resources  
And  
Michael Bruno, PhD  
Provost  
University of Hawai'i at Mānoa

### HB 1993 HD1 – RELATING TO AGRICULTURAL LEASES

Chair Tarnas, Vice Chair Branco, and members of the House Committee on Water and Land:

Thank you for the opportunity to provide testimony in support of the general intent of this bill, but expressing some concerns as with its companion bill SB 3011.

The University notes that agricultural land is not easily available to new farmers. The main issue outlined by HB 1993 HD1 is real, and there is a need to address how and why agricultural land in Hawai'i is leased; and how best to promote agricultural activity in the state.

It should also be noted that the problems of placing new farmers on farmland extends beyond the leasing statutes outlined here. They include the lack of capital required to get started, the lack of appropriate infrastructure for significant agricultural activity; and the degree farm size, and how we define farm size, can add to agriculture's share of the Gross State Product.

It should also be noted that given the Governor's and the legislature's desire for greater food security in Hawai'i, it's clear that this will be accomplished by bringing current and new farms into the >\$250 million to >\$350 million in sales category, not by promoting a larger number of farms <\$50 million in sales.

HB 1993 HD1, by noting that land leases by the Hawai'i Department of Agriculture (HDOA) is for the purpose of agricultural activity, and that it is expected the land should remain productive, does partially address the issue of getting state land into production. The following comments are suggestions to incorporate.

Section 1, page 1, lines 11-14. The idea of productive land versus unproductive land is first addressed. What is the guide to determine productive and unproductive land? The

example of using agricultural land as a place to live and not a place to farm is explanatory. However, the language relating to the land not being farmed with an intensity or using methods that are not highly productive is not clear what the standard or goal is meant to be. This statement is confusing.

Section 1, page 2, lines 2-4. It's unclear as the highest bidder could be the farmer best able to use the land for production.

Section 3, page 3, line 17. Does the term "new leases" also apply to leases nearing expiration and possibly up for renewal; or just leases that are reopened with no expectation of renewal? The language appears to include those that could be renewed by existing lessees. Does this not recognize the work that the farmer has done during the previous lease?

Section 3, page 4, line 2. It is unclear what "prevailing market rate" is referenced from or tied to. Could this be clarified?

Section 3, Page 8, lines 3-5. The idea of "comparable productivity to new leases being issued" is confusing. In other words, does this mean if there is a problem, the farmer can't change management to something that better suits their needs if it does not meet some predetermined level of productivity? If a crop or approach is changed, how can this be met in a reasonable way? Again, how is productivity measured? Can the valuation of ecosystem services be part of the productivity calculation? Farming has to change as conditions and markets change. Is this allowable under these conditions? The idea of comparable productivity is also mentioned in other parts of the bill that should also be addressed.

In summary, we support HB 1993 HD1 in its intent, but express concerns about some concepts. We strongly support the idea that agricultural land should be put into use. Since this affects HDOA, we defer to their testimony on how this might help or hinder their leasing operation.



COMMITTEE ON WATER & LAND  
Rep. David A. Tarnas, Chair  
Rep. Patrick Pihana Branco, Vice Chair

**HB1993 HD1**  
Relating to Agricultural Leases

Thursday, February 17, 2022, 8:30 AM  
VIA VIDEOCONFERENCE

Chair Tarnas, Vice Chair Branco, and Members of the Committee,

The Hawaii Cattlemen's Council (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of over 750 thousand acres of land in Hawaii, or 20% of the State's total land mass. We represent the interests of Hawaii's cattle producers.

The Hawaii Cattlemen's Council **offers comments on HB1993 HD1** to update certain state leasing statutes to maximize the benefit to the State of agricultural lands and to help the State achieve its economic and food production goals.

We recognize the intent to support new farmers and ranchers and understand there is difficulty in finding suitable land for agricultural use. However, we also support established, current farmers and ranchers with a proven record of success, and would not want this bill to be a detriment to those who are on the land and need continuity in their leases to confidently produce agricultural products. We do not support the reduction in years allowed for extensions, as longevity of leases is an important factor to an agricultural lease.

We appreciate the opportunity to testify on this measure.

Nicole Galase  
Hawaii Cattlemen's Council  
Managing Director





P.O. Box 253, Kunia, Hawai'i 96759  
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February 17, 2022

HEARING BEFORE THE  
HOUSE COMMITTEE ON WATER AND LAND

**TESTIMONY ON HB1993, HD1**  
RELATING TO AGRICULTURAL LEASES

Conference Room 430 & via Videoconference  
8:30 AM

Aloha Chair Tarnas, Vice-Chair Branco, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

**The Hawaii Farm Bureau understands the intent but respectfully opposes HB 1993, HD1.** We offer the following comments about our significant concerns regarding this measure which would change certain state department of agriculture leasing statutes in an attempt to increase economic and certain food production goals.

While we agree with the department having the authority to review current leases to ensure lease requirements are being met, and we certainly agree with timely notification to the department in the case of a lessee's death or inability to continue agricultural use of the lease, we cannot support other proposed amendments such as a reduction in the number of years allowed for extensions, the compensation upon transfers, and the requirement for use of current productivity standards.

We agree with the department of agriculture and the University of Hawaii that the proposed changes will adversely impact farming operations with unreasonable limitations that would restrict growth and overall success and disincentivize the continued investment in time, money, and effort needed to maintain farming operations properly on leases nearing their expiration.

There are good reasons for the more accommodating agriculture department lease terms and it is *not* in the best interest of the public for the department to convert to a "highest and best use" mandate. Because farm plans can change depending on a myriad of variables, the department should oversee but not dictate what should be grown and how. Every lease is unique; the department's expertise and discretion should not be removed through mandatory statutes.



For example, lessees may have invested heavily in their businesses and this must be taken into consideration upon transfers and terminations. Additionally, farmers who have not had the opportunity to invest in very expensive high tunnels or other beneficial structures should not be penalized because they don't have the latest technology to meet the proposed new and very subjective standards.

Thank you for the opportunity to provide our comments and thank you for your continued support of Hawaii's agricultural community.



02/16/2022

Elise Nielsen, Owner  
Kihei Poultry, LLC  
486 Kalalau Place  
Kihei, HI 96753  
808-283-6950

To the Chair and Board,

My name is Elise Nielsen, owner of Kihei Poultry LLC. I am in support of House Bill 1993. I am in agreement with section 1 paragraph 4 which states, "The purpose of this Act is to update certain state non-agricultural park leasing statutes to maximize the benefit to the State of these lands and to help the State achieve its economic and food production goals." It is my personal opinion that the phrasing in Section 3 can be misunderstood in regards to how leases are awarded. This bill states that "...the department shall first conduct a public auction... the department shall select the best-suited bidder from among all bidders..." I would suggest amending the verbiage from "public auction" to "public applications" as the definition of auction is "sold to the highest bidder". I agree with the department selecting the best suited bidder from among all bidders, however the verbiage should change from "bidder" to "applicant". It is encouraging to see the DOA place a higher value on fulfilling Act 90 over who offers more money to secure a lease agreement. I agree with Section 4 (a), "...the department may negotiate and enter into leases with any person who: (3) Is determined by the department to have a beneficial impact on agriculture." Negotiations allow for clearer back and forth conversations regarding aligning the goals of the DOA and lessee.

I have requested to lease an ag zoned parcel currently approved for pasture use and ranching from DOA. This specific parcel is a 2003 ACT 90 SLH transfer, under the organization of the Working Group as assigned by 2021 ACT 139 HB 469 to fulfill ACT 90 SLH 2003. Kihei Poultry's operation is in alignment with approved current use as pasture and ranching, 2003 ACT 90 SLH, as well as State and County goals. 2021 ACT 139 HB 469 confirms the authority and responsibility of The Act 90 Working Group to adopt rules pursuant to chapter 91 to effectuate the purposes of 2003 ACT 90 SLH. In solidarity with The Act 90 Working Groups' findings reported on December 21st, 2021 regarding the benefit of changing the classification of this pasture land to multi-use land, Kihei Poultry LLC is in full support of collaborating with DOA and DLNR and serve as a pioneer and model as they adopt standards and rules for the

Program and pave the way for the fulfillment of 2003 ACT 90 SLH as well as State and County goals of self-sustainability by means of local food production. Kihei Poultry LLC'S operation is in alignment with all state and County laws, goals, and 2003 ACT 90. The purpose of Act 90 is to further agricultural activities and food production under the jurisdiction of DOA, as they hold authority to amend any lease language currently prohibiting the furthering of local food production.

Multi-use land is described in the Act 90 Working Group's Report attached below. An example of the benefits of rezoning parcels to agricultural multi-use on a case by case basis would be an agriculturally zoned parcel to raise livestock and poultry, with commercially zoned structures on property, such as a commercial kitchen and processing center. By rezoning to multi-use, small scale farmers and ranchers would be able to participate in furthering Hawaii's self-sustainability and food security.

Below is documentation in support of aforementioned statements:  
Maui Island Plan Overview, Hawaii State Constitution, ACT 90 SLH 2003, available parcel, 2021 ACT 139 H.B.469, 2003 Act 90 Working Group, HRS 166-3, HRS 166-E-3, HRS 166-10, HRS 205-4.5, HRS 205-4.6

**Maui Island Plan Overview** [www.mauicounty.gov](http://www.mauicounty.gov)

"Key highlights of the Plan include: ... Economic diversification. We will promote emerging industries such as ... local agriculture"

**Hawaii State Constitution**

**Article 11 Section 3**

"The State shall ... promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands "

**Article 11 Section 10**

"The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible "

**ACT 90 SLH 2003**

**NON-AGRICULTURAL PARK LANDS**

"The legislature finds that article 11, section 10, of the State Constitution establishes that the public lands shall be used for the development of farm and home ownership on as widespread a basis as possible ... The purpose of this chapter is to ensure the long-term productive use of public lands leased or available to be leased by the department of land and natural resources for agricultural purposes by allowing these lands to be transferred to and managed by the department of agriculture.... The department may accept the transfer of and manage certain qualifying non-agricultural park lands; and ... the department shall administer a program to manage the transferred non-agricultural park lands under rules adopted by the board pursuant to chapter 91. The program and its rules shall be separate and distinct from the agricultural park program and its rules... the program shall include the following conditions pertaining to encumbered non-agricultural park lands; ... The lessee's or permittee's agricultural operation

shall be economically viable as specified by the board ... The department shall ... convert qualified and encumbered non-agricultural park lands to department leases or other forms of encumbrance ... The board shall adopt rules pursuant to chapter 91 to effectuate the purposes of this chapter.”

#### **H.B 469**

#### **2021 ACT 139**

#### **RELATING TO THE TRANSFER OF NON-AGRICULTURAL PARK LANDS.**

“...the department of agriculture has greater flexibility under chapter 166E, Hawaii Revised Statutes, to amend, extend, and issue new leases by negotiation... The legislature believes that positive advancement in sustainable agriculture... wildlife management... can be cooperatively managed through mutually beneficial practices with ranching... The purpose of this ACT is to establish a working group of legislators and administration officials to: ... facilitate the process of fulfilling the purposes of 2003 ACT 90.”

#### **Dec. 21, 2021 Act 90 SLH 2003 Working Group Report**

<https://www.capitol.hawaii.gov/specialcommittee.aspx?comm=act90wg&year=2021>

“Challenges and Findings... The Working Group also finds that improved collaborative working relationships between DLNR, DOA, and lessees of multi-use agricultural lands will facilitate the management or co-management of these DLNR multi-use parcels to benefit public values, including food production... Multi-use lands can support sustainable land management, including natural resource conservation, at a reduced cost to the State. These “win-win-win” multi-uses are enhanced when DLNR and DOA collaborate with lessees of pasture lands to steward lands and harness additional funding to support multiple uses, such as by using Natural Resources Conservation Service programs and similar opportunities.”

#### **HRS 166E-3**

#### **TRANSFER AND MANAGEMENT OF NON-AGRICULTURAL PARK LANDS AND RELATED FACILITIES TO THE DEPARTMENT OF AGRICULTURE**

“The program and its rules shall be separate and distinct from the agricultural park program and its rules... The program shall include the following conditions... The lessee’s or permittee’s agricultural operation shall be economically viable as specified by the board...”

#### **HRS 166-E-3**

§ -2 Definitions. For the purposes of this chapter: "Agricultural activities" means the care and production of livestock, livestock products, poultry, or poultry products, or apiary, horticultural, or floricultural products, or the planting, cultivating, and harvesting of crops or trees.

(c) For any encumbered or unencumbered non-agricultural park lands transferred to the department that are not being utilized or required for the public purpose stated, the order setting aside the lands shall be withdrawn and the lands shall be returned to the department of land and natural resources.

#### **HRS 166E-10**

## **NON-AGRICULTURAL PARK LAND DEVELOPMENT**

"...the department may develop non-agricultural park lands that, at the option of the board, may be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, and construction of buildings thereon; provided that: (1) The board finds the development is consistent with the public purpose and intent of this chapter and meets minimum health and safety requirements... The final plans and specifications for the development shall be deemed approved by the county if the final plans and specifications do not substantially deviate from the preliminary plans and specifications."

## **HRS 205-4.5**

### **PERMISSIBLE USES WITHIN THE AGRICULTURAL DISTRICTS**

" (3) Raising of livestock, including poultry... that are propagated for economic or personal use... public institutions and buildings that are necessary for agricultural practices... buildings and uses, including mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the above-mentioned uses and are permitted under section 205-2 (d)"

## **HRS 205-4.6**

### **PRIVATE RESTRICTIONS ON AGRICULTURAL USES AND ACTIVITIES; NOT ALLOWED**

Sincerely,



Elise Nielsen, Owner  
Kihei Poultry LLC  
808-283-6950  
kiheipoultry@gmail.com



## Environmental Caucus of The Democratic Party of Hawai'i

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To: The Honorable David A. Tarnas, Chair  
The Honorable Patrick Pihana Branco, Vice Chair  
House Committee on Water & Land

Re: **HB 1993, HD1 - RELATING TO AGRICULTURAL LEASES**  
Hearing: Thursday, February 17, 2022, 8:30 a.m., Room 430 & videoconference  
Position: **Strong Support**

Aloha, Chair Tarnas, Vice Chair Branco, and Members of the Committee on Water and Land:

The Environmental Caucus of the Democratic Party of Hawai'i stands in strong support of HB 1993, HD1. This measure would modify requirements and restrictions related to the department of agriculture's dispositions of non-agricultural park lands to maximize the benefit of the State of agricultural lands to help the State achieve its economic and food production goals.

The intent of this bill is to reduce or eliminate long-term state agricultural leases that are not being put to its best productive use by current lessees by (1) reducing the term of new long-term leases from 65 years to 35 years, and (2) limiting renewal terms to no more than 15 years. This would allow for new leases to be entered into by prospective lessees earlier where the lease terms are shorter. In addition, new leases are available by auction to the "best suited" bidder, whether they are existing or prospective lessees, who may not necessarily be the "highest" bidder, thus giving potential lessees a greater opportunity to obtain a lease based on productivity and use rather than on financial ability.

This bill also provides a mechanism for the approval or confirmation of the productive use of land in the event of a major change in the lessee, such as death, disability, or death of a spouse, in which case the continued productivity and use of the land would require approval and confirmation by the department based on a submission by the successor lessee within twelve months of the major event.

In our view, this bill is highly beneficial as it allows for more oversight and flexibility by the department and offers greater opportunities for prospective lessees who do not necessarily have the financial wherewithal otherwise; accordingly, we respectfully request that this bill be passed by your Committee. Mahalo for the opportunity to testify,

*Melodie Adyja*

Co-Chair, Environmental Caucus of the  
Democratic Party of Hawai'i  
Email: [legislativepriorities@gmail.com](mailto:legislativepriorities@gmail.com)