

ACT 221

H.B. NO. 871

A Bill for an Act Relating to Agricultural Enterprises.

Be It Enacted by the Legislature of the State of Hawaii:

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

**“CHAPTER
AGRICULTURAL ENTERPRISES**

§ -1 **Purpose.** Article XI, section 3, of the Hawaii State Constitution establishes in part that the “State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.”

Smaller scale farming operations, particularly those associated with diversified agriculture, often do not have ready access to, or the resources to pay for, their own modern processing, packing, storage, and distribution enterprises to allow them to expand or maximize the productivity of their agricultural operations. Due to global competition and the recent implementation of national food safety standards, the department of agriculture has found it necessary to support the growth of diversified agriculture by encouraging agricultural enterprises on the department of agriculture’s lands. The department of agriculture encourages activities including the planning, design, construction, operation, and management of agricultural enterprises to ensure the economic viability of agricultural operations, and allows lessees to do the same. Therefore, it is in the State’s best interests to establish an agricultural enterprise program within the

department of agriculture, which will also help meet state constitutional requirements to promote and support diversified agriculture and increase agricultural self-sufficiency.

Accordingly, the purpose of this chapter is to authorize the department of agriculture or its lessees to plan, design, construct, operate, manage, maintain, repair, demolish, and remove infrastructure or improvements on any lands over which the department has jurisdiction where the activity is necessary to support and promote agriculture; accept from the department of land and natural resources the transfer of any lands that will serve an agricultural purpose; and efficiently operate or manage those resources.

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

“Agricultural activities” includes:

- (1) The care and production of livestock, livestock products, poultry, and poultry products;
- (2) The care and production of apiary, horticultural, and floricultural products;
- (3) The planting, cultivating, and harvesting of crops or trees; and
- (4) 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.

“Aquacultural activities” means the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment; provided that the farm or ranch is on or directly adjacent to land.

“Board” means the board of agriculture.

“Department” means the department of agriculture.

“Lessee” means a lessee under a lease issued by or transferred to the department or any tenant, licensee, grantee, permittee, assignee, or other person authorized to conduct an agricultural enterprise by the board or department.

§ -3 Department’s powers in general; agricultural enterprises. In addition to any other powers authorized in this chapter, to support and promote agriculture, the department may:

- (1) Plan, design, construct, operate, manage, maintain, repair, demolish, and remove infrastructure or improvements on any lands under the jurisdiction of the department; and
- (2) Permit a lessee to plan, design, construct, operate, manage, maintain, repair, demolish, and remove infrastructure or improvements on any lands under the jurisdiction of the department.

§ -4 Transfer and management of agricultural enterprise lands and agricultural enterprises; agricultural enterprise program. (a) Upon mutual agreement and approval by the board and the board of land and natural resources:

- (1) The department may accept from the department of land and natural resources the transfer and management of certain qualifying agricultural enterprise lands and agricultural enterprises; and
- (2) Certain assets, including position counts, related to the management of existing encumbered and unencumbered agricultural enterprise lands and agricultural enterprises, and related facilities, shall be transferred to the department.

(b) The department shall administer an agricultural enterprise program to manage the transferred agricultural enterprise lands and agricultural enterprises under rules adopted by the board pursuant to chapter 91. The program and its rules shall be separate and distinct from the respective programs and rules for agricultural parks and non-agricultural parks. Agricultural enterprise lands and agricultural enterprises shall not be the same as, and shall not be selected or managed as, lands under agricultural park or non-agricultural park leases. Notwithstanding any other law to the contrary, the agricultural enterprise program shall include the following conditions pertaining to the transfer of encumbered or unencumbered agricultural enterprise lands and agricultural enterprises:

- (1) At the time of transfer, the lessee or permittee shall:
 - (A) Be in full compliance with the existing lease or permit;
 - (B) Not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county; and
 - (C) Have an economically viable agricultural operation as determined by the board;
- (2) No encumbered or unencumbered agricultural enterprise lands and agricultural enterprises with soils classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be transferred for the use or development of golf courses, golf driving ranges, or 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 agricultural enterprise lands and agricultural enterprises. 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 law to the contrary, qualified and encumbered agricultural enterprise lands and agricultural enterprises transferred to the department shall not have the respective length of term of the lease or rents reduced over the remaining fixed term of the applicable encumbrances.

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

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

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

- (2) Other lands and enterprises subject to the authority of the department pursuant to section -9.

Except as provided by subsection (d), the department shall 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 pursuant to section -7 and subject to the following:

- (1) All land and enterprises shall be disposed of in a manner that supports or promotes agricultural activities 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 activities 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;
 - (B) Parcel the land into minimum size economic units sufficient for the intended uses;
 - (C) Make, or require the lessee to make, improvements that are necessary to achieve the intended uses;
 - (D) Set the upset price or lease rent based upon an appraised evaluation of the property value, adjustable to the specified use of the lot;
 - (E) Set the term of the lease, which shall be no less than fifteen years nor more than sixty-five years, including any extension granted for mortgage lending or guarantee purposes; and
 - (F) Establish other terms and conditions that the board deems necessary, including restrictions against alienation and provisions for withdrawal by the board; and
- (5) Any transferee, assignee, or sublessee of an agricultural enterprise lease shall first qualify as an applicant under this chapter. For the purposes of this paragraph, any transfer, assignment, sale, or other disposition of any interest, excluding a security interest, by any legal entity that holds an agricultural enterprise lease shall be treated as a transfer of the agricultural enterprise lease and shall be subject to the approval of the board, reasonable terms and conditions consistent with this chapter, and rules adopted pursuant to this chapter. No transfer shall be approved by the board if the disposition of the stock or assets or other interest of the applicant would result in the failure of the person to qualify for an agricultural enterprise lease.

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

(d) The board may issue easements, licenses, permits, and rights-of-entry for uses that are consistent with the purposes for which the lands were set

aside or are otherwise subject to the authority of the department pursuant to section -9.

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

- (1) Public lands set aside by executive order pursuant to section 171-11 for use as agricultural enterprise lands and agricultural enterprises;
- (2) Other lands with the approval of the board that may be subject to a joint venture partnership agreement pursuant to section -10; and
- (3) Lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 155-4(11).

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

§ -11 Lease negotiation. (a) The department may 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 a leasehold.

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

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

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

- (1) If the lease is canceled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, the institutional lender shall be entitled to issuance of a new lease in its name for a term equal to the term of the lease remaining immediately before the cancellation, termination, or rejection, with all terms and conditions being the same as in the canceled, terminated, or rejected lease, except only for the liens, claims, and encumbrances, if any, that were superior to the institutional lender before the cancellation, termination, or rejection; provided that a lease that is rejected or deemed rejected under bankruptcy law shall be deemed canceled and terminated for all purposes under state law;
- (2) If the lessee's interest under a lease is transferred to an institutional lender, including by reason of paragraph (1), acquisition of the lessee's interest pursuant to a judicial or nonjudicial foreclosure sale, or an assignment in lieu of foreclosure:
 - (A) The institutional lender shall be liable for the obligations of the lessee under the lease for the period of time during which the institutional lender is the holder of the lessee's interest; provided that the institutional lender shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease; and
 - (B) Section -8(b)(1) and (2) shall not apply to the lease or the demised land during the time the institutional lender holds the lease; provided that:
 - (i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation, termination, or rejection to the satisfaction of the board; and
 - (ii) The new lease issued to the institutional lender shall terminate one hundred twenty days from the effective date of issuance, at which time the institutional lender shall either sell or assign the lease and section -8(b)(1) and (2) shall apply to the new lease;
- (3) If there is a delinquent loan balance secured by a security interest:

- (A) The lease shall not be canceled or terminated, except for cancellation by reason of default of the lessee;
 - (B) No increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, shall be imposed or become payable; and
 - (C) No lands shall be withdrawn from the lease, except either by eminent domain proceedings beyond the control of the board or with prior written consent of the institutional lender, which shall not be unreasonably withheld; and
- (4) If the lease contains any provision requiring the payment of a premium to the lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender have been paid in full.

(c) Ownership of both the lease and the security interest by an institutional lender shall not effect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the lease and security interest with the consent of the board.

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

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

- (1) The purchase, assignment, or transfer shall conform with subsection (b)(4); and
- (2) The purchase, assignment, or transfer of the rights shall be reserved for and exercisable only by an institutional lender.

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

(f) For the purposes of this section:

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

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

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

§141-1 Duties in general. The department of agriculture shall:

- (1) Gather, compile, and tabulate, from time to time, information and statistics concerning:
 - (A) Entomology and plant pathology: Insects, scales, blights, and diseases injurious or liable to become injurious to trees, plants, or other vegetation, and the ways and means of exterminating pests and diseases already in the State and preventing the

introduction of pests and diseases not yet [~~here;~~] in the State; and

- (B) General agriculture: Fruits, fibres, and useful or ornamental plants and their introduction, development, care, and manufacture or exportation, with a view to introducing, establishing, and fostering new and valuable plants and industries;
- (2) Encourage and cooperate with the agricultural extension service and agricultural experiment station of the University of Hawaii and all private persons and organizations doing work of an experimental or educational character coming within the scope of the subject matter of chapters 141, 142, and 144 to 150A, and avoid, as far as practicable, duplicating the work of those persons and organizations;
 - (3) Enter into contracts, cooperative agreements, or other transactions with any person, agency, or organization, public or private, as may be necessary in the conduct of the department's business and on [~~such~~] any terms [~~as~~] the department may deem appropriate; provided that the department shall not obligate any funds of the State, except the funds that have been appropriated to the department. Pursuant to cooperative agreement with any authorized federal agency, employees of the cooperative agency may be designated to carry out, on behalf of the State the same as department personnel, specific duties and responsibilities under chapters 141, 142, and 150A, and rules adopted pursuant to those chapters, for the effective prosecution of pest control and animal disease control and the regulation of import into the State and intrastate movement of regulated articles;
 - (4) Secure copies of the laws of other states, 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 other matters germane to chapters 141, 142, and 144 to 150A and that the department may deem proper;
 - (8) Administer a program of agricultural planning and development, including the formulation and implementation of general and special plans, including but not limited to the functional plan for agriculture; administer the planning, development, and management of the agricultural park program; plan, construct, operate, and maintain the state irrigation water systems; plan, design, construct, operate, manage, maintain, repair, demolish, and remove infrastructure or improvements on any lands under the jurisdiction of the department; review, interpret, and make recommendations with respect to

public policies and actions relating to agricultural land and water use; assist in research, evaluation, development, enhancement, and expansion of local agricultural industries; and serve as liaison with other public agencies and private organizations for the above purposes. In the foregoing, the department shall act to conserve and protect agricultural lands and irrigation water systems, promote diversified agriculture, increase agricultural self-sufficiency, and ensure the availability of agriculturally suitable lands; and

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

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

SECTION 4. This Act shall take effect on July 1, 2022.

(Approved June 27, 2022.)