
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 state
7 constitution establishes in part that the "State shall conserve
8 and protect agricultural lands, promote diversified agriculture,
9 increase agricultural self-sufficiency and assure the
10 availability of agriculturally suitable lands."

11 The legislature finds that smaller scale farming
12 operations, particularly those associated with diversified
13 agriculture, usually do not have ready access to nor the
14 resources to pay for their own modern processing, packing,
15 storage, and distribution enterprises to expand or maximize
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 needs to support the growth of diversified agriculture by
3 encouraging agricultural enterprises on the department of
4 agriculture's state lands through activities including planning,
5 designing, constructing, operating, and managing agricultural
6 enterprises to ensure the economic viability of agricultural
7 operations, as well as allowing lessees to do the same.

8 Therefore, the legislature finds that it is in the State's best
9 interests to promote and support diversified agriculture and
10 ensure agricultural sustainability by establishing an
11 agricultural enterprise program within the department of
12 agriculture, for purposes and in a manner consistent with
13 article XI, section 3, of the state constitution.

14 The purpose of this chapter is to establish the
15 agricultural enterprise program within the department of
16 agriculture to allow the department or a lessee to plan, design,
17 construct, operate, manage, maintain, repair, demolish, and
18 remove facilities on any lands over which the department has
19 jurisdiction, to support and promote agriculture, and to accept
20 the transfer of any lands that will support an agricultural



1 purpose from the department of land and natural resources and to
2 operate or manage those resources.

3 **§ -2 Definitions.** As used in this chapter, unless the
4 context otherwise requires:

5 "Agricultural activities" means the care and production of
6 livestock; livestock products; poultry; poultry products;
7 apiary, horticultural, and floricultural products; the planting,
8 cultivating, and harvesting of crops or trees; and any other
9 activity that can demonstrate a tie to agriculture.

10 "Agricultural enterprise" means an activity directly and
11 primarily supporting the production and sale of Hawaii
12 agriculture.

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

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

21 "Board" means the board of agriculture.



"Department" means the department of agriculture.

§ -3 Department's powers in general; agricultural enterprises. To support and promote agriculture, the department may:

(1) Plan, design, construct, operate, manage, maintain, repair, demolish, and remove facilities on any lands under the jurisdiction of the department;

(2) Permit a lessee to plan, design, construct, operate, manage, maintain, repair, demolish, and remove facilities on any lands under the jurisdiction of the department; and

(3) Upon mutual agreement and approval by the board and the board of land and natural resources, accept the transfer of and manage qualifying agricultural enterprises and agricultural enterprise lands from the department of land and natural resources.

§ -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 (1) The department may accept the transfer of and manage
2 certain qualifying agricultural enterprise lands and
3 agricultural enterprises from the department of land
4 and natural resources; and

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

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



1 unencumbered agricultural enterprise lands and agricultural
2 enterprises:

3 (1) As of the time of transfer:

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

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

9 (C) The lessee's or permittee's agricultural
10 operation shall be economically viable as
11 specified by the board;

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

19 (3) The transfer of agricultural enterprise lands and
20 agricultural enterprises shall be done in a manner to
21 be determined by the board.



1 (c) For any encumbered or unencumbered agricultural
2 enterprise lands and agricultural enterprises transferred to the
3 department that are not being utilized or required for the
4 public purpose stated, the order setting aside the lands shall
5 be withdrawn and the lands shall be returned to the department
6 of land and natural resources.

7 **§ -5 Conversion of qualified and encumbered other**
8 **agricultural lands.** The department shall establish criteria and
9 rules pursuant to chapter 91, and subject to approval by the
10 board, may convert qualified and encumbered agricultural
11 enterprise lands and agricultural enterprises to department
12 leases or other forms of encumbrance.

13 **§ -6 Extension of qualified and encumbered agricultural**
14 **enterprise lands and agricultural enterprises.** Notwithstanding
15 chapter 171, the board shall establish criteria and rules to
16 allow the cancellation, renegotiation, and extension of
17 transferred encumbrances by the department. Notwithstanding any
18 law to the contrary, qualified and encumbered agricultural
19 enterprise lands and agricultural enterprises transferred to the
20 department shall not have the respective length of term of the



1 lease or rents reduced over the remaining fixed term of the
2 applicable encumbrances.

3 **§ -7 Rules.** The board shall adopt rules pursuant to
4 chapter 91, including eligibility requirements for each
5 disposition and applicant qualifications, to effectuate the
6 purposes of this chapter.

7 **§ -8 Agricultural enterprise special fund; established.**

8 (a) There is established in the state treasury the agricultural
9 enterprise special fund to be administered by the department,
10 into which shall be deposited:

11 (1) Legislative appropriations to the fund; and
12 (2) All lease rent, fees, penalties, and any other revenue
13 or funds collected from agricultural enterprise lands
14 and agricultural enterprises, together with the
15 revenue or funds collected from agricultural
16 enterprise lands and agricultural enterprises that are
17 transferred, or in the process of being transferred,
18 to the department under this chapter.

19 (b) Moneys in the special fund shall be used for planning,
20 designing, constructing, operating, maintaining, managing,



1 repairing, demolishing, and removing agricultural enterprise
2 lands and agricultural enterprises under this chapter.

3 **§ -9 Disposition.** (a) Notwithstanding any provision of
4 this chapter and chapter 171 to the contrary, the department may
5 dispose of the following by negotiation, drawing of lots,
6 conversion, or public auction:

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

9 (2) Other lands and enterprises under the jurisdiction of
10 the department pursuant to section -10.

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

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

16 (1) All land and enterprises shall be disposed of for
17 purposes of supporting or promoting agricultural or
18 aquacultural activities;

19 (2) Each lessee shall derive a major portion of the
20 lessee's total annual income earned from the lessee's



1 activities on the premises; provided that this
2 restriction shall not apply if:

3 (A) Failure to meet the restriction results from
4 mental or physical disability or the loss of a
5 spouse; or

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

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

11 (4) The board shall:

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

14 (B) Parcel the land into minimum size economic units
15 sufficient for the intended uses;

16 (C) Make, or require the lessee to make, improvements
17 that are necessary to achieve the intended uses;

18 (D) Set the upset price or lease rent based upon an
19 appraised evaluation of the property value,
20 adjustable to the specified use of the lot;



1 (E) Set the term of the lease, which shall be no less
2 than fifteen years nor more than sixty-five
3 years, including any extension granted for
4 mortgage lending or guarantee purposes; and

5 (F) Establish other terms and conditions it deems
6 necessary, including restrictions against
7 alienation and provisions for withdrawal by the
8 board; and

9 (5) Any transferee, assignee, or sublessee of an
10 agricultural enterprise lease shall first qualify as
11 an applicant under this chapter. For the purpose of
12 this paragraph, any transfer, assignment, sale, or
13 other disposition of any interest, excluding a
14 security interest, by any legal entity that holds an
15 agricultural enterprise lease shall be treated as a
16 transfer of the agricultural enterprise lease and
17 shall be subject to the approval of the board and to
18 reasonable terms and conditions, consistent with this
19 chapter and rules adopted pursuant to this chapter.
20 No transfer shall be approved by the board if the
21 disposition of the stock or assets or other interest



1 of the legal entity would result in the failure of the
2 entity to qualify for an agricultural enterprise
3 lease.

4 (c) After notice of the breach or default as provided in
5 rules adopted by the board consistent with section -7, a
6 violation of any provision in this section shall be cause for
7 the board to cancel the lease and take possession of the land,
8 or take other action as the board, in its sole discretion, deems
9 appropriate.

10 (d) The board may issue easements, licenses, permits, and
11 rights-of-entry for uses that are consistent with the purposes
12 for which the lands were set aside or are otherwise subject to
13 the authority of the department pursuant to section -10.

14 **§ -10 Authority to plan, design, develop, and manage**
15 **agricultural enterprise lands and agricultural enterprises.** The
16 department, or its tenants subject to the department's approval,
17 may plan, design, develop, and manage agricultural enterprise
18 lands and agricultural enterprises on:

19 (1) Public lands set aside by executive order pursuant to
20 section 171-11 for use as agricultural enterprise
21 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 -11; and

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

§ -11 Agricultural enterprise lands and agricultural enterprise development. On behalf of the State or in partnership with a federal agency, a county, or a private party, the department may develop agricultural enterprise lands and agricultural enterprises.

§ -12 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.

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



- 1 (1) Determined to have a nexus for agricultural purposes;
- 2 (2) Set aside for agricultural or agricultural-related
- 3 uses only, by the governor through an executive order,
- 4 to the department; and
- 5 (3) Not needed by any state or county agency for any other
- 6 public purpose.
- 7 (c) In negotiating and executing a lease as authorized,
- 8 the board shall:
- 9 (1) Require the appraisal of the parcel using standards of
- 10 national appraiser organizations to determine the
- 11 rental, including percentage rent;
- 12 (2) Require the payment of a premium, computed as twenty-
- 13 five per cent of the annual lease rent, with the
- 14 premium to be added to the annual lease rent for each
- 15 year of the lease equal to the number of years the
- 16 lessee has occupied the land; provided that the
- 17 premium period shall not exceed seven years; and
- 18 (3) Recover from the lessee the costs of expenditures
- 19 required by the department to convert the parcel into
- 20 leasehold.



1 The department shall notify in writing those eligible for lease
2 negotiations under this section and shall inform the applicants
3 of the terms, conditions, and restrictions provided by this
4 section. Any eligible person may apply for a lease by
5 submitting a written application to the department within thirty
6 days from the date of receipt of notification; provided that the
7 department may require documentary proof from any applicant to
8 determine that the applicant meets eligibility and qualification
9 requirements for a lease.

10 **§ -13 Policy.** Notwithstanding chapter 171, disposition
11 of lands set aside for use pursuant to this chapter shall not be
12 subject to the prior approval of the board of land and natural
13 resources.

14 **§ -14 Rights of holders of security interests.** (a)
15 Prior board action shall be required when an institutional
16 lender acquires the lessee's interest through a foreclosure
17 sale, judicial or nonjudicial, or by way of assignment in lieu
18 of foreclosure, or when the institutional lender sells or causes
19 the sale of the lessee's interest in a lease by way of a
20 foreclosure sale, judicial or nonjudicial. The institutional



1 lender shall convey a copy of the sale or assignment as recorded
2 in the bureau of conveyances.

3 (b) Notwithstanding any other provision of this chapter,
4 if any lease is subject to a security interest held by an
5 institutional lender and if the institutional lender has given
6 to the board a copy of the encumbrance as recorded in the bureau
7 of conveyances:

8 (1) If the lease is canceled for violation of any non-
9 monetary lease term or condition, or if the lease is
10 deemed terminated or rejected under bankruptcy laws,
11 the institutional lender shall be entitled to issuance
12 of a new lease in its name for a term equal to the
13 term of the lease remaining immediately prior to the
14 cancellation, termination, or rejection, with all
15 terms and conditions being the same as in the
16 canceled, terminated, or rejected lease, except only
17 for the liens, claims, and encumbrances, if any, that
18 were superior to the institutional lender before the
19 cancellation, termination, or rejection. If a lease
20 is rejected or deemed rejected under bankruptcy law,



1 the lease shall be deemed canceled and terminated for
2 all purposes under state law;

3 (2) If the lessee's interest under a lease is transferred
4 to an institutional lender, including by reason of
5 paragraph (1), by reason of acquisition of the
6 lessee's interest pursuant to a foreclosure sale,
7 judicial or nonjudicial, and by reason of an
8 assignment in lieu of foreclosure:

9 (A) The institutional lender shall be liable for the
10 obligations of the lessee under the lease for the
11 period of time during which the institutional
12 lender is the holder of the lessee's interest but
13 shall not be liable for any obligations of the
14 lessee arising after the institutional lender has
15 assigned the lease; and

16 (B) Section -9(b)(1) and (2) shall not apply to
17 the lease or the demised land during the time the
18 institutional lender holds the lease; provided
19 that:

20 (i) For non-monetary lease violations, the
21 institutional lender shall first remedy the



1 lease terms that caused the cancellation,
2 termination, or rejection to the
3 satisfaction of the board; and

4 (ii) The new lease issued to the institutional
5 lender shall terminate one hundred twenty
6 days from the effective date of issuance,
7 when the institutional lender shall either
8 sell or assign the lease, after which date
9 section -9(b)(1) and (2) shall apply to
10 the new lease;

11 (3) If there is a delinquent loan balance secured by a
12 security interest, the lease shall not be canceled or
13 terminated, except for cancellation by reason of
14 default of the lessee, and no increase over and above
15 the fair market rent, based upon the actual use of the
16 land demised and subject to the use restrictions
17 imposed by the lease and applicable laws, shall be
18 imposed or become payable, and no lands shall be
19 withdrawn from the lease, except by eminent domain
20 proceedings beyond the control of the board, except
21 with prior written consent by the institutional lender



1 and that consent shall not be unreasonably withheld;

2 and

3 (4) If the lease contains any provision requiring the
4 payment of a premium to the lessor on assignment of
5 the lease, any premium shall be assessed only after
6 all amounts owing by any debt secured by a security
7 interest held by an institutional lender have been
8 paid in full.

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

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

18 (e) The rights of a purchaser, assignee, or transferee of
19 an institutional lender's security interest, including a junior
20 lien holder, shall be exercisable by the purchaser, assignee, or



1 transferee as successor in interest to the institutional lender;
2 provided that:

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

5 (2) The purchase, assignment, or transfer of such rights
6 shall be reserved for and exercisable only by an
7 institutional lender.

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

12 (f) For the purposes of this section:

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

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



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

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

8 "**§141-1 Duties in general.** The department of agriculture
9 shall:

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

12 (A) Entomology and plant pathology: Insects, scales,
13 blights, and diseases injurious or liable to
14 become injurious to trees, plants, or other
15 vegetation, and the ways and means of
16 exterminating pests and diseases already in the
17 State and preventing the introduction of pests
18 and diseases not yet here; and

19 (B) General agriculture: Fruits, fibres, and useful
20 or ornamental plants and their introduction,
21 development, care, and manufacture or



1 exportation, with a view to introducing,
2 establishing, and fostering new and valuable
3 plants and industries;

4 (2) Encourage and cooperate with the agricultural
5 extension service and agricultural experiment station
6 of the University of Hawaii and all private persons
7 and organizations doing work of an experimental or
8 educational character coming within the scope of the
9 subject matter of chapters 141, 142, and 144 to 150A,
10 and avoid, as far as practicable, duplicating the work
11 of those persons and organizations;

12 (3) Enter into contracts, cooperative agreements, or other
13 transactions with any person, agency, or organization,
14 public or private, as may be necessary in the conduct
15 of the department's business and on such terms as the
16 department may deem appropriate; provided that the
17 department shall not obligate any funds of the State,
18 except the funds that have been appropriated to the
19 department. Pursuant to cooperative agreement with
20 any authorized federal agency, employees of the
21 cooperative agency may be designated to carry out, on



1 behalf of the State the same as department personnel,
2 specific duties and responsibilities under chapters
3 141, 142, 150A, and rules adopted pursuant to those
4 chapters, for the effective prosecution of pest
5 control and animal disease control and the regulation
6 of import into the State and intrastate movement of
7 regulated articles;

- 8 (4) Secure copies of the laws of other states,
9 territories, and countries, and other publications
10 germane to the subject matters of chapters 141, 142,
11 and 144 to 150A, and make laws and publications
12 available for public information and consultation;
- 13 (5) Provide buildings, grounds, apparatus, and
14 appurtenances necessary for the examination,
15 quarantine, inspection, and fumigation provided for by
16 chapters 141, 142, and 144 to 150A; for the obtaining,
17 propagation, study, and distribution of beneficial
18 insects, growths, and antidotes for the eradication of
19 insects, blights, scales, or diseases injurious to
20 vegetation of value and for the destruction of



1 injurious vegetation; and for carrying out any other
2 purposes of chapters 141, 142, and 144 to 150A;

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

7 (7) Publish at the end of each year a report of the
8 expenditures and proceedings of the department and of
9 the results achieved by the department, together with
10 other matters germane to chapters 141, 142, and 144 to
11 150A and that the department may deem proper;

12 (8) Administer a program of agricultural planning and
13 development, including the formulation and
14 implementation of general and special plans, including
15 but not limited to the functional plan for
16 agriculture; administer the planning, development, and
17 management of the agricultural park program; plan,
18 construct, operate, and maintain the state irrigation
19 water systems; plan, design, construct, operate,
20 manage, maintain, repair, demolish, and remove
21 improvements on any lands to which the department has



jurisdiction under title XI to support or promote
agriculture; 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."



1 SECTION 3. The following positions are established within
2 the agricultural resource management division of the department
3 of agriculture:

4 (1) One full-time equivalent (1.0 FTE) engineer V position
5 (SR26); and

6 (2) One full-time equivalent (1.0 FTE) land agent V
7 position (SR24).

8 SECTION 4. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so much
10 thereof as may be necessary for fiscal year 2018-2019 to be
11 deposited into the agricultural enterprise special fund.

12 SECTION 5. There is appropriated out of the agricultural
13 enterprise special fund the sum of \$ or so much thereof
14 as may be necessary for fiscal year 2018-2019 for the planning,
15 design, construction, operation, management, maintenance,
16 repair, demolition, and removal of infrastructure on lands under
17 the jurisdiction of the department of agriculture pursuant to
18 title XI, Hawaii Revised Statutes, to support and promote
19 agriculture, including the following positions within the
20 agricultural resource management division:



- 1 (1) One full-time equivalent (1.0 FTE) engineer V position
2 (SR26); and
3 (2) One full-time equivalent (1.0 FTE) land agent V
4 position (SR24).

5 The sum appropriated shall be expended by the department of
6 agriculture for the purposes of this Act.

7 SECTION 6. New statutory material is underscored.

8 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Agricultural Enterprises; Agricultural Enterprise Special Fund;
Appropriation

Description:

Establishes a new agricultural enterprise program within 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. Creates two new positions to implement the program. Establishes the agricultural enterprise special fund. Makes an appropriation. Effective 7/1/2050. (SD2)

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

