

JAN 23 2020

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# A BILL FOR AN ACT

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RELATING TO AGRICULTURAL LEASES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that the current  
2 preference rights for agricultural park lots and other  
3 agricultural lands do not consider self-financed improvements  
4 made by lessees. This discourages lessees from using their own  
5 funds to make improvements near the end of a lease term.

6       The legislature further finds that adding a preference for  
7 lessees who have made a significant improvement to their  
8 agricultural lands will improve agricultural productivity,  
9 promote agriculture, and increase agricultural self-sufficiency  
10 in the State.

11       The purpose of this Act is to:

12       (1) Add an agricultural park lot preference right for  
13           lessees who have made a significant improvement to  
14           their lot; and

15       (2) Require the department of agriculture to consider the  
16           same preferences of awarding agricultural park lot



1 leases in the awarding of non-agricultural park land  
2 leases.

3 SECTION 2. Chapter 166E, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "**s166E- Preference right.** Any person who is otherwise  
7 qualified to take a lease pursuant to this chapter and who:

8 (1) Is a veteran with an honorable discharge;

9 (2) Qualifies as a displaced farmer;

10 (3) Operates a farm located in a zoning district where  
11 that use is a nonconforming use;

12 (4) Qualifies as a new farmer; or

13 (5) Pursuant to generally accepted accounting principles  
14 or statutory accounting principles, may amortize or  
15 depreciate a significant improvement on the land that  
16 provides a public benefit and continues a viable  
17 agricultural operation,

18 shall be given preference in obtaining a lease pursuant to this  
19 chapter."

20 SECTION 3. Section 166-6, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1       "(a) Any provision of this chapter to the contrary  
2 notwithstanding, the board may by negotiation, drawing of lot,  
3 or public auction, directly dispose of public lands and related  
4 facilities set aside and designated for use as agricultural  
5 parks, and any other lands and facilities under the jurisdiction  
6 of the department pursuant to section 166-3 and notwithstanding  
7 chapter 171. Except as provided by subsection (c), dispositions  
8 may be by lease and shall be subject to the requirements set  
9 forth in rules adopted by the board in conformity with section  
10 166-9, and subject also to the following limitations:

11       (1) The property shall be disposed of for agricultural or  
12       aquacultural purposes only;

13       (2) The lessee shall derive the major portion of the  
14       lessee's total annual income from the lessee's  
15       activities on the premises; provided that this  
16       restriction shall not apply if failure to meet the  
17       restriction results from mental or physical disability  
18       or the loss of a spouse, or if the premises are fully  
19       utilized in the production of crops or products for  
20       which the disposition was granted;



- 1       (3) The lessee shall comply with all federal and state  
2       laws regarding environmental quality control;
- 3       (4) The board shall determine the specific uses for which  
4       the disposition is intended; parcel the land into  
5       minimum size economic units sufficient for the  
6       intended uses; make, or require the lessee to make  
7       improvements as are required to achieve the intended  
8       uses; set the upset price or lease rent based upon an  
9       appraised evaluation of the property value adjustable  
10      as provided in rules adopted in accordance with  
11      chapter 91 to the specified use of the lot; set the  
12      term of the lease, which shall be not less than  
13      fifteen years nor more than fifty-five years,  
14      including any extension granted for a significant  
15      improvement made to the property or mortgage lending  
16      or guarantee purposes; and establish other terms and  
17      conditions as it may deem necessary, including but not  
18      limited to restrictions against alienation and  
19      provisions for withdrawal by the board;



1 (5) No lease shall be made to any person who is in arrears  
2 in the payment of taxes, rents, or other obligations  
3 owing the State or any county; and

4 (6) Any transferee, assignee, or sublessee of an  
5 agricultural park lease shall first qualify as an  
6 applicant under this chapter. For the purpose of this  
7 paragraph, any transfer, assignment, sale, or other  
8 disposition of any interest, excluding a security  
9 interest, of any legal entity [~~which~~] that holds an  
10 agricultural park lease shall be treated as a transfer  
11 of the agricultural park lease and shall be subject to  
12 the approval of the board of agriculture upon  
13 reasonable terms and conditions, not inconsistent with  
14 this chapter or rules of the board, [~~which~~] that the  
15 board may deem necessary. No transfer shall be  
16 approved by the board if the disposition of the stock,  
17 or assets or other interest of the legal entity would  
18 result in the failure of the entity to qualify for an  
19 agricultural park lease."

20 SECTION 4. Section 166-8, Hawaii Revised Statutes, is  
21 amended to read as follows:



1       "**§166-8 Preference right.** Any person who [~~is~~]:  
2       (1) Is otherwise qualified to take an agricultural park  
3       lot[~~, who is~~];  
4       (2) Is a veteran with an honorable discharge[~~, or who~~  
5       qualifies];  
6       (3) Qualifies as a displaced farmer[~~, or who operates~~];  
7       (4) Operates a farm located in a zoning district where  
8       [~~such~~] that use is a nonconforming use[~~, or who~~  
9       qualifies];  
10      (5) Qualifies as a new farmer[~~7~~]; or  
11      (6) Pursuant to generally accepted accounting principles  
12      or statutory accounting principles may amortize or  
13      depreciate a significant improvement on the  
14      agricultural park lot that provides a public benefit  
15      and continues a viable agricultural operation,  
16      shall be given preference in obtaining an agricultural park  
17      lot."

18       SECTION 5. Section 166E-8, Hawaii Revised Statutes, is  
19      amended by amending subsection (b) to read as follows:



"(b) In all dispositions, the department shall be subject to the requirements set forth in rules adopted by the board consistent with section 166E-6 and subject to the following:

(1) All land and facilities shall be disposed of for purposes of agricultural or aquacultural activities only;

(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 or the loss of a spouse; or

(B) The premises are fully used in the production of crops or products 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 required 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 that shall be not less than fifteen years nor more than sixty-five years, including any extension granted for a significant improvement made to the property or mortgage lending or guarantee purposes; and
  - (F) Establish other terms and conditions it deems necessary, including but not limited to restrictions against alienation and provisions for withdrawal by the board; and
- (5) Any transferee, assignee, or sublessee of a non-agricultural park lease shall first qualify as an applicant under this chapter. For the purpose of this paragraph, any transfer, assignment, sale, or other disposition of any interest, excluding a security





1 interest, by any legal entity that holds a non-  
2 agricultural park lease shall be treated as a transfer  
3 of the non-agricultural park lease and shall be  
4 subject to the approval of the board and to reasonable  
5 terms and conditions, consistent with this chapter or  
6 rules of the board that the board may deem necessary.  
7 No transfer shall be approved by the board if the  
8 disposition of the stock or assets or other interest  
9 of the legal entity would result in the failure of the  
10 entity to qualify for a non-agricultural park land  
11 lease."

12 SECTION 6. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval.  
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INTRODUCED BY:

Francis E. P. L.

Francis E. P. L.  
~~Francis E. P. L.~~  
Francis E. P. L.  
Francis E. P. L.



# S.B. NO. 3114

**Report Title:**

Department of Agriculture; Agricultural Park Leases; Non-agricultural Park Land Leases; Qualifications; Terms; Preferences; Improvements

**Description:**

Gives preference rights for an agricultural park lot and a non-agricultural park land lease to lessees who have made a significant improvement. Adds the same preferences for a non-agricultural park land lease as those for an agricultural park lot lease.

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

