
A BILL FOR AN ACT

RELATING TO THE TRANSFER OF NON-AGRICULTURAL PARK LANDS.

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

1 PART I

2 SECTION 1. The legislature finds that Act 90, Session Laws
3 of Hawaii 2003, was enacted to transfer certain non-agricultural
4 park lands from the department of land and natural resources to
5 the department of agriculture. While three hundred parcels
6 consisting of approximately nineteen thousand acres have been
7 transferred over the past seventeen years, many parcels have not
8 been transferred.

9 The legislature further finds that many state pasture
10 lessees have requested the department of land and natural
11 resources to transfer their leases to the department of
12 agriculture for management because the department of agriculture
13 has greater flexibility under chapter 166E, Hawaii Revised
14 Statutes, to amend, extend, and issue new leases by negotiation.
15 The department of land and natural resources has not acted on
16 the requests of its pasture lessees because of the high natural
17 resource value of certain pasture lands, their proximity to



1 forest reserves, or their importance in providing access to
2 other public lands for hunting or public recreation purposes.

3 The legislature notes that the perceived need to transfer
4 pasture leases to the department of agriculture can, in part, be
5 relieved by providing the department of land and natural
6 resources with statutory powers and requiring the adoption of
7 administrative rules similar to those exercised by the
8 department of agriculture in the management of its leases.

9 The legislature believes that positive advancement in
10 sustainable agriculture, carbon sequestration challenges,
11 wildlife management, wildfire protection, and forest health
12 concerns can be cooperatively managed through mutually
13 beneficial practices with ranching, wildlife protection, and
14 native forest restoration.

15 PART II

16 SECTION 2. The purpose of this part is to facilitate the
17 transfer of certain non-agricultural park lands from the
18 department of land and natural resources to the department of
19 agriculture pursuant to Act 90, Session Laws of Hawaii 2003, and
20 chapter 166E, Hawaii Revised Statutes, regarding non-
21 agricultural park lands, by requiring the two departments to



1 periodically meet to discuss the potential for future land
2 transfers.

3 SECTION 3. Section 166E-3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 " ~~[+]~~§166E-3~~[+]~~ **Transfer and management of non-agricultural**
6 **park lands and related facilities to the department of**
7 **agriculture.** (a) Upon mutual agreement and approval of the
8 board and the board of land and natural resources:

9 (1) The department may accept the transfer of and manage
10 certain qualifying non-agricultural park lands; and

11 (2) Certain assets, including position counts, related to
12 the management of existing encumbered and unencumbered
13 non-agricultural park lands and related facilities
14 shall be transferred to the department.

15 (b) The department shall administer a program to manage
16 the transferred non-agricultural park lands under rules adopted
17 by the board pursuant to chapter 91. The program and its rules
18 shall be separate and distinct from the agricultural park
19 program and its rules. Non-agricultural park lands are not the
20 same as, and shall not be selected or managed as ~~[are]~~, lands
21 under agricultural park leases. Prior to offering a lease, the



1 department shall inquire with the department of land and natural
2 resources regarding any easements required by the department of
3 land and natural resources to access landlocked forest reserves
4 or other assets of the department of land and natural resources
5 on the lands subject to the lease. Notwithstanding any other

6 law to the contrary, the program shall include the following
7 conditions pertaining to encumbered non-agricultural park lands:

- 8 (1) The lessee or permittee shall perform in full
9 compliance with the existing lease or permit;
- 10 (2) The lessee or permittee shall not be in arrears in the
11 payment of taxes, rents, or other obligations owed to
12 the State or any county;
- 13 (3) The lessee's or permittee's agricultural operation
14 shall be economically viable as specified by the
15 board; and
- 16 (4) No encumbered or unencumbered non-agricultural park
17 lands with soils classified by the land study bureau's
18 detailed land classification as overall (master)
19 productivity rating class A or B shall be transferred
20 for the use or development of golf courses, golf
21 driving ranges, and country clubs.

1 The transfer of non-agricultural park lands shall be done [~~in a~~
2 ~~manner to be determined by the board of agriculture.~~] pursuant
3 to this section.

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

9 (d) No later than one year after the effective date of
10 Act _____, Session Laws of Hawaii 2021, the department and the
11 department of land and natural resources shall meet and identify
12 by mutual agreement the non-agricultural park lands under the
13 jurisdiction of the department of land and natural resources and
14 in agricultural use that should remain under the jurisdiction of
15 the department of land and natural resources.

16 (e) All non-agricultural park lands under the jurisdiction
17 of the department of land and natural resources and in
18 agricultural use and not identified pursuant to subsection (d)
19 shall be placed under the jurisdiction of the department.

20 (f) Beginning in the 2021-2022 fiscal year, and no less
21 than every fifth fiscal year thereafter, the department and the



1 department of land and natural resources shall meet and
2 determine by mutual agreement additional lands that may be
3 appropriate for transfer from the department of land and natural
4 resources to the department for the purposes of this chapter."

5 SECTION 4. (a) No later than twenty days prior to the
6 convening of the regular session of 2022, the department of land
7 and natural resources shall submit a report to the legislature
8 on its meetings with the department of agriculture pursuant to
9 section 166E-3(d), Hawaii Revised Statutes, regarding the
10 progress and status of:

11 (1) Identifying by mutual agreement the non-agricultural
12 park lands under the jurisdiction of the department of
13 land and natural resources that are not in use for the
14 public purpose for which it has been leased; and

15 (2) Transferring the non-agricultural park lands under the
16 jurisdiction of the department of land and natural
17 resources that are currently leased and being utilized
18 for the agricultural public purpose as defined by
19 their current lease agreements.

20 (b) No later than twenty days prior to the convening of
21 the regular session of 2023 and annually thereafter, the



1 department of land and natural resources shall submit to the
2 legislature a report regarding the transfer of non-agricultural
3 park lands under its jurisdiction, that are currently leased and
4 being utilized for the agricultural public purpose as defined by
5 their current lease agreements, to the department of
6 agriculture.

7 PART III

8 SECTION 5. The purpose of this part is to authorize the
9 board of land and natural resources to amend and extend existing
10 pasture leases and to issue new pasture leases by negotiation in
11 furtherance of public purposes that are the responsibility of
12 the board of land and natural resources and department of
13 agriculture to promote, such as food production and natural
14 resource conservation and stewardship.

15 SECTION 6. Section 171-36, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§171-36 Lease restrictions; generally.** (a) Except as
18 otherwise provided, the following restrictions shall apply to
19 all leases:

20 (1) Options for renewal of terms are prohibited;



- 1 (2) No lease shall be for a longer term than sixty-five
2 years, except in the case of a residential leasehold,
3 which may provide for an initial term of fifty-five
4 years with the privilege of extension to meet the
5 requirements of the Federal Housing Administration,
6 Federal National Mortgage Association, Federal Land
7 Bank of Berkeley, Federal Intermediate Credit Bank of
8 Berkeley, Berkeley Bank for Cooperatives, or
9 Department of Veterans Affairs requirements; provided
10 that the aggregate of the initial term and extension
11 shall in no event exceed seventy-five years;
- 12 (3) No lease shall be made for any land under a lease that
13 has more than two years to run;
- 14 (4) No lease shall be made to any person who is in arrears
15 in the payment of taxes, rents, or other obligations
16 owed to the State or any county;
- 17 (5) No lease shall be transferable or assignable, except
18 by devise, bequest, or intestate succession; provided
19 that with the approval of the board, the assignment
20 and transfer of a lease or unit thereof may be made in
21 accordance with current industry standards, as



1 determined by the board; provided further that prior
2 to the approval of any assignment of lease, the board
3 shall have the right to review and approve the
4 consideration to be paid by the assignee and may
5 condition its consent to the assignment of the lease
6 on payment by the lessee of a premium based on the
7 amount by which the consideration for the assignment,
8 whether by cash, credit, or otherwise, exceeds the
9 depreciated cost of improvements and trade fixtures
10 being transferred to the assignee; provided further
11 that with respect to state agricultural leases, in the
12 event of foreclosure or sale, the premium, if any,
13 shall be assessed only after the encumbrances of
14 record and any other advances made by the holder of a
15 security interest are paid;

16 (6) The lessee shall not sublet the whole or any part of
17 the demised premises, except with the approval of the
18 board; provided that prior to the approval, the board
19 shall have the right to review and approve the rent to
20 be charged to the sublessee; provided further that in
21 the case where the lessee is required to pay rent



1 based on a percentage of its gross receipts, the
2 receipts of the sublessee shall be included as part of
3 the lessee's gross receipts; provided further that the
4 board shall have the right to review and, if
5 necessary, revise the rent of the demised premises
6 based upon the rental rate charged to the sublessee,
7 including the percentage rent, if applicable, and
8 provided that the rent may not be revised downward;

9 (7) The lease shall be for a specific use or uses and
10 shall not include waste lands, unless it is
11 impractical to provide otherwise;

12 (8) Mineral and metallic rights and surface and ground
13 water shall be reserved to the State; and

14 (9) No lease of public lands, including submerged lands,
15 or any extension of any lease of public lands shall be
16 issued by the State to any person to construct, use,
17 or maintain a sunbathing or swimming pier or to use
18 the lands for those purposes, unless the lease, or any
19 extension thereof, contains provisions permitting the
20 general public to use the pier facilities on the
21 public lands and requiring that a sign or signs be



1 placed on the pier, clearly visible to the public,
2 that indicates the public's right to the use of the
3 pier. The board, at the earliest practicable date,
4 and where legally possible, shall cause all existing
5 leases to be amended to conform to this paragraph.
6 The term "lease", for the purposes of this paragraph,
7 includes month-to-month rental agreements and similar
8 tenancies.

9 (b) The board, [~~from time to time,~~] upon the issuance or
10 during the term of any intensive agricultural, aquaculture,
11 commercial, mariculture, special livestock, pasture, or
12 industrial lease, [~~may~~] shall, as the board finds warranted:

- 13 (1) Modify or eliminate any of the restrictions specified
14 in subsection (a);
- 15 (2) Extend or modify the fixed rental period of the lease;
16 provided that the aggregate of the initial term and
17 any extension granted shall not exceed sixty-five
18 years; or
- 19 (3) Extend the term of the lease, to the extent necessary
20 to qualify the lease for mortgage lending or guaranty
21 purposes with any federal mortgage lending agency, to



1 qualify the lessee for any state or private lending
2 institution loan, private loan guaranteed by the
3 State, or any loan in which the State and any private
4 lender participates, or to amortize the cost of
5 substantial improvements to the demised premises that
6 are paid for by the lessee without institutional
7 financing.

8 (c) Any extension authorized pursuant to subsection (b)
9 shall be based on the economic life of the improvements as
10 determined by the board or an independent appraiser; provided
11 that the approval of any extension shall be subject to the
12 following:

- 13 (1) The demised premises have been used substantially for
14 the purpose for which they were originally leased;
- 15 (2) The aggregate of the initial term and any extension
16 granted shall not be for more than sixty-five years;
- 17 (3) In the event of a reopening, the rental for any
18 ensuing period shall be the fair market rental at the
19 time of reopening;
- 20 (4) Any federal or private lending institution shall be
21 qualified to do business in the State;



1 (5) Proceeds of any mortgage or loan shall be used solely
2 for the operations or improvements on the demised
3 premises;

4 (6) Where improvements are financed by the lessee, the
5 lessee shall submit receipts of expenditures within a
6 time period specified by the board or else the lease
7 extension shall be canceled; and

8 (7) The rules of the board setting forth any additional
9 terms and conditions, which shall ensure and promote
10 the purposes of the demised lands.

11 (d) The board, at any time during the term of any
12 intensive agricultural, aquaculture, or mariculture lease and
13 when justified by sound economic practices or other
14 circumstances, may permit an alternative agricultural,
15 aquaculture, or mariculture use or uses for any portion or
16 portions of the land demised. As a condition to permitting
17 alternative uses, the board may require any other modifications,
18 including rental adjustments or changes in the lease, as may be
19 necessary to effect or accommodate the alternative use or uses.
20 An alternative use or uses may be allowed by the board upon:

21 (1) The application of the lessee;



1 (2) Consent of each holder of record having a security
2 interest in the leasehold; and

3 (3) A finding by the board that the alternative use or
4 uses are in the public interest.

5 (e) The board, from time to time, during the term of any
6 agriculture, intensive agriculture, aquaculture, commercial,
7 mariculture, special livestock, pasture, or industrial lease,
8 may modify or eliminate any of the restrictions specified in
9 subsection (a), extend or modify the fixed rental period of the
10 lease, or extend the term of the lease upon a showing of
11 significant economic hardship directly caused by:

12 (1) State disaster, pursuant to chapter 209, including
13 seismic or tidal wave, tsunami, hurricane, volcanic
14 eruption, typhoon, earthquake, flood, or severe
15 drought; or

16 (2) A taking of a portion of the area of the lease by
17 government action by eminent domain, withdrawal, or
18 conservation easement; provided that the portion taken
19 shall not be less than ten per cent of the entire
20 leased area unless otherwise approved by the board;
21 and provided that the board determines that the lessee



1 will not be adequately compensated pursuant to the
2 lease provisions.

3 (f) The approval of any extension granted pursuant to
4 subsection (e) shall be subject to the following:

5 (1) The demised premises have been used substantially for
6 the purposes for which they were originally leased;

7 (2) The aggregate of the initial term and any extension
8 granted shall not be for more than fifty-five years;

9 (3) The rental shall not be less than the rental for the
10 preceding term;

11 (4) The rules of the board setting forth any additional
12 terms and conditions, which shall ensure and promote
13 the purposes of the demised lands; and

14 (5) The length of the extension shall not exceed a
15 reasonable length of time for the purpose of providing
16 relief [~~and shall in no case exceed five years~~].

17 (g) Any provision of this chapter to the contrary
18 notwithstanding, the board may amend and extend pasture leases
19 in furtherance of public purposes that are the responsibility of
20 the department and the department of agriculture to promote;
21 provided that:



1 (1) The leased lands have been used substantially for the
2 purpose for which they were originally leased;

3 (2) The aggregate of the initial term and any extension
4 granted shall not be for more than sixty-five years;
5 and

6 (3) The board may consider key characteristics of public
7 lands most likely to benefit from the amendment and
8 extension of pasture leases, identification of public
9 purposes to be promoted through lease amendment and
10 extension, a description of the types of lessee
11 obligations regarding natural resource conservation
12 and stewardship that will serve to achieve the
13 identified public purposes, a statement of the types
14 of lease amendments that are desirable to promote
15 these public purposes, eligibility requirements for
16 pasture lessees, and applicant qualifications.

17 The board may set the lease rent for the period of the
18 lease term occurring after an amendment under this subsection on
19 such terms and conditions as the board may determine, including
20 but not limited to a value that incentivizes or otherwise
21 promotes ranching operations compatible with the public purposes



1 that are the responsibility of the department to promote. In
 2 arriving at a rental value, the board may also consider the
 3 specified use of the land; any restriction on grazing or other
 4 beneficial uses of the land or portions thereof by lessee; any
 5 conservation or stewardship services required to be performed by
 6 the lessee under the amended lease; and any withdrawal of lands
 7 from the lease premises. If an independent appraisal is
 8 procured to determine rent for an amended pasture lease, the
 9 board shall apply a lower rate of return if warranted after
 10 consideration of the public purpose served by the lease, use
 11 restrictions thereunder, and any obligation of the lessee to
 12 provide conservation or stewardship services."

13 SECTION 7. Section 171-59, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "**§171-59 Disposition by negotiation.** (a) A lease of
 16 public land may be disposed of through negotiation upon a
 17 finding by the board of land and natural resources that the
 18 public interest demands it. Where the public land is being
 19 sought under this section by a sugar or pineapple company, and
 20 the company is the owner or operator of a mill or cannery, then,
 21 for the purposes of this section, the economic unit shall be



1 that acreage of public land which when taken together with the
2 lands already owned or controlled or available to the company,
3 when cultivated is found by the board to be necessary for the
4 company's optimum mill or cannery operation. In all other
5 cases, public land to be sold under this section shall be an
6 economic unit as provided in section 171-33(3).

7 After a determination is made to negotiate the disposition
8 of a lease, the board shall:

- 9 (1) Give public notice as in public auction, in accordance
10 with the procedure set forth in section 171-16(a), of
11 its intention to lease public land through negotiation
12 setting forth the minimum conditions thereunder, the
13 use for which the public land will be leased. Any
14 person interested in securing the lease shall file an
15 application with the board not later than forty-five
16 days after the first publication of the notice;
- 17 (2) Establish reasonable criteria for the selection of the
18 lessee; provided that where the intended use of the
19 land is agriculture, the department of agriculture
20 shall establish the criteria;

1 (3) Determine the applicants who meet the criteria for
2 selection set by the board or the department of
3 agriculture, as the case may be, and notify all
4 applicants of its determination. Any applicant may
5 examine the basis of the determination, which shall be
6 in writing, to ascertain whether or not the conditions
7 and criteria established by the board or the
8 department of agriculture were followed; provided that
9 if any applicant does not notify the board of the
10 applicant's objections, and the grounds therefor, in
11 writing, within twenty days of the receipt of the
12 notice, the applicant shall be barred from proceeding
13 to seek legal remedy for any alleged failure of the
14 board to follow the conditions and criteria.

15 If only one applicant meets the criteria for selection of
16 the lessee, the board may, after notice as provided in (3),
17 above, dispose of the lease by negotiation.

18 If two or more applicants meet the criteria for the
19 selection of the lessee, the board shall select the lessee who
20 submits the highest offer contained in a sealed bid deposited
21 with the board.



1 (b) Disposition of public lands for airline, aircraft,
2 airport-related, agricultural processing, cattle feed
3 production, aquaculture, marine, maritime, and maritime-related
4 operations may be negotiated without regard to the limitations
5 set forth in subsection (a) and section 171-16(c); provided
6 that:

7 (1) The disposition encourages competition within the
8 aeronautical, airport-related, agricultural,
9 aquaculture, maritime, and maritime-related
10 operations;

11 (2) The disposition shall not exceed a maximum term of
12 thirty-five years, except in the case of:

13 (A) Maritime and maritime-related operations, which
14 may provide for a maximum term of seventy years;
15 and

16 (B) Aquaculture operations, which may provide for a
17 maximum term of sixty-five years; provided that
18 aquaculture operations in good standing may seek
19 to renew a lease issued under this section and,
20 during the lease term, may engage in supportive



1 activities that are related to or integrated with
2 aquaculture; and

3 (3) The method of disposition of public lands for cattle
4 feed production as set forth in this subsection shall
5 not apply after December 31, 1988.

6 For the purposes of this subsection:

7 "Agricultural processing" means the processing of
8 agricultural products, including dairying, grown, raised, or
9 produced in Hawaii.

10 "Airport-related" means a purpose or activity that requires
11 air transportation to achieve that purpose or activity; or an
12 activity that generates revenue for the airport system as
13 provided in section 261-7.

14 "Aquaculture" means the propagation, cultivation, or
15 farming of aquatic plants and animals in controlled or selected
16 environments for research, commercial, or stocking purposes,
17 including aquaponics or any growing of plants or animals with
18 aquaculture effluents.

19 "Maritime-related" means a purpose or activity that
20 requires and is directly related to the loading, off-loading,



1 storage, or distribution of goods and services of the maritime
2 industry.

3 (c) Any provision of this chapter to the contrary
4 notwithstanding, the board may issue pasture leases by
5 negotiation for lands already under pasture use, respectively,
6 when doing so will further public purposes that are the
7 responsibility of the department and the department of
8 agriculture to promote; provided that:

9 (1) The term of any pasture lease issued under this
10 subsection shall not be for more than sixty-five
11 years; and

12 (2) The board may consider key characteristics of public
13 lands most likely to benefit from the negotiation of
14 pasture leases, identification of public purposes to
15 be promoted through negotiation of pasture leases, a
16 description of the types of lessee obligations
17 regarding food production and natural resource
18 conservation and stewardship that will serve to
19 achieve the identified public purposes, eligibility
20 requirements for pasture lessees, and applicant
21 qualifications.



1 SECTION 10. This Act shall take effect on January 1, 2050.



Report Title:

HDOA; DLNR; Non-agricultural Park Lands; Pasture Leases;
Industrial Leases

Description:

Requires the Department of Land Natural Resources and Department of Agriculture to meet and identify the non-agricultural park lands that should be rezoned as those in the conservation district. Requires unidentified non-agricultural park lands under the jurisdiction of the Department of Land and Natural Resources to be placed under Department of Agriculture jurisdiction. Requires the Department of Land and Natural Resources and Department of Agriculture to meet every 5 years to discuss transferring remaining lands. Requires the Department of Land and Natural Resources to report to the Legislature. Requires the Department of Agriculture to inquire about any easements needed by Department of Land and Natural Resources before offering a lease. Authorizes the Board of Land and Natural Resources to amend and extend existing pasture leases and to issue new pasture leases by negotiation in furtherance of public purposes that the Department of Land and Natural Resources and Department of Agriculture are responsible for promoting. Effective 1/1/2050. (SD2)

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