

JAN 27 2021

A BILL FOR AN ACT

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



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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 "§166E- 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~~]:

17 (A) Failure to meet the restriction results from
18 mental or physical disability or the loss of a
19 spouse[~~r~~]; or [~~if the~~]



1 significant improvement made to the property or
2 mortgage lending or guarantee purposes; and
3 [~~establish~~]
4 (F) Establish other terms and conditions as it may
5 deem necessary, including but not limited to
6 restrictions against alienation and provisions
7 for withdrawal by the board;
8 (5) No lease shall be made to any person who is in arrears
9 in the payment of taxes, rents, or other obligations
10 owing the State or any county; and
11 (6) Any transferee, assignee, or sublessee of an
12 agricultural park lease shall first qualify as an
13 applicant under this chapter. For the purpose of this
14 paragraph, any transfer, assignment, sale, or other
15 disposition of any interest, excluding a security
16 interest, of any legal entity [~~which~~] that holds an
17 agricultural park lease shall be treated as a transfer
18 of the agricultural park lease and shall be subject to
19 the approval of the board of agriculture upon
20 reasonable terms and conditions, not inconsistent with
21 this chapter or rules of the board[~~, which~~] that the



1 board may deem necessary. No transfer shall be
 2 approved by the board if the disposition of the stock,
 3 ~~[or]~~, assets, or other interest of the legal entity
 4 would result in the failure of the entity to qualify
 5 for an agricultural park lease."

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

8 "**§166-8 Preference right.** Any person who ~~[is]~~:

9 (1) Is otherwise qualified to take an agricultural park
 10 lot~~[, who is]~~;

11 (2) Is a veteran with an honorable discharge~~[, or who~~
 12 qualifies];

13 (3) Qualifies as a displaced farmer~~[, or who operates]~~;

14 (4) Operates a farm located in a zoning district where
 15 ~~[such]~~ that use is a nonconforming use~~[, or who~~
 16 qualifies];

17 (5) Qualifies as a new farmer~~[,]~~; or

18 (6) Pursuant to generally accepted accounting principles
 19 or statutory accounting principles, may amortize or
 20 depreciate a significant improvement on the



1 agricultural park lot that provides a public benefit
2 and continues a viable agricultural operation,
3 shall be given preference in obtaining an agricultural park
4 lot."

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

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

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

13 (2) Each lessee shall derive a major portion of the
14 lessee's total annual income earned from the lessee's
15 activities on the premises; provided that this
16 restriction shall not apply if:

17 (A) Failure to meet the restriction results from
18 mental or physical disability or the loss of a
19 spouse; or



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- 1 (B) The premises are fully used in the production of
2 crops or products for which the disposition was
3 granted;
- 4 (3) The lessee shall comply with all federal and state
5 laws regarding environmental quality control;
- 6 (4) The board shall:
- 7 (A) Determine the specific uses for which the
8 disposition is intended;
- 9 (B) Parcel the land into minimum size economic units
10 sufficient for the intended uses;
- 11 (C) Make, or require the lessee to make, improvements
12 that are required to achieve the intended uses;
- 13 (D) Set the upset price or lease rent based upon an
14 appraised evaluation of the property value,
15 adjustable to the specified use of the lot;
- 16 (E) Set the term of the lease that shall be [~~not~~] no
17 less than fifteen years nor more than sixty-five
18 years, including any extension granted for a
19 significant improvement made to the property or
20 mortgage lending or guarantee purposes; and



1 (F) Establish other terms and conditions it deems
2 necessary, including but not limited to
3 restrictions against alienation and provisions
4 for withdrawal by the board; and
5 (5) Any transferee, assignee, or sublessee of a non-
6 agricultural park lease shall first qualify as an
7 applicant under this chapter. For the purpose of this
8 paragraph, any transfer, assignment, sale, or other
9 disposition of any interest, excluding a security
10 interest, by any legal entity that holds a non-
11 agricultural park lease shall be treated as a transfer
12 of the non-agricultural park lease and shall be
13 subject to the approval of the board and to reasonable
14 terms and conditions, consistent with this chapter or
15 rules of the board that the board may deem necessary.
16 No transfer shall be approved by the board if the
17 disposition of the stock or assets or other interest
18 of the legal entity would result in the failure of the
19 entity to qualify for a non-agricultural park land
20 lease."



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1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.

4

INTRODUCED BY:

Francis J. Anouge



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Report Title:

Department of Agriculture; Agricultural Park Leases; Non-agricultural Park Land Leases; Preference Rights; 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.

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