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

8       The legislature further finds that Act 139, Session Laws of  
9 Hawaii 2021, established the Act 90 working group to determine  
10 the process, status, challenges, and potential remedies  
11 regarding the transfer of non-agricultural park lands to fulfill  
12 the purposes of Act 90. The working group determined that  
13 certain lands would be considered eligible for transfer if an  
14 easement were provided to allow the department of land and  
15 natural resources or the public to access an adjacent parcel.

16       The purpose of this Act is to:



- 1       (1) Adopt a recommendation from the Act 90 working group  
2           that authorizes the department of agriculture, prior  
3           to any transfer of certain qualifying non-agricultural  
4           park lands, to request from the department of land and  
5           natural resources any information related to the  
6           establishment of necessary and reasonable easements  
7           upon the lands;
- 8       (2) Require the department of agriculture to accept the  
9           transfer of and manage certain encumbered non-  
10          conservation, non-agricultural park lands, including  
11          pasture leases;
- 12       (3) Require the department of agriculture, prior to  
13          offering a lease, to inquire with the department of  
14          land and natural resources regarding any easements  
15          required for access to landlocked forest reserves or  
16          other assets on the lands subject to the lease;
- 17       (4) Exempt easements granted over public lands affecting  
18          the transfer of undeveloped public lands between the  
19          department of land and natural resources and the  
20          department of agriculture, pursuant to Act 90, from



1 formal county subdivision process and approval  
2 requirements;

3 (5) Require the lessee to develop a conservation program  
4 and plan if conservation resources exist on the land;  
5 and

6 (6) Require approval from the board of land and natural  
7 resources and the board of agriculture before removing  
8 pasture lands for reforestation, or other public  
9 purposes.

10 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended  
11 by adding a new section to be appropriately designated and to  
12 read as follows:

13 "§46- Easements; formal subdivision process and approval  
14 exemption. Notwithstanding any provision of law to the  
15 contrary, the granting of easements on public lands affecting  
16 the transfer of undeveloped public lands between the department  
17 of land and natural resources and department of agriculture,  
18 pursuant to Act 90, Session Laws of Hawaii 2003, may be exempt  
19 from formal subdivision process and approval requirements,  
20 including requirements for surveying and formalizing easements.  
21 The government agency that grants the easements may notify in



1 writing the county with jurisdiction to process and approve the  
2 easements of the government agency's intent to invoke this  
3 exemption."

4 SECTION 3. Section 46-66, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§46-66 **Disposition of real property.** Notwithstanding any  
7 other law to the contrary[7] and except as provided in section  
8 46- , each county, subject to the approval of the council, may  
9 grant, sell, or otherwise dispose of any easement for particular  
10 purposes in perpetuity by direct negotiation or otherwise,  
11 subject to reverter to the county upon the termination or  
12 abandonment of the specific purpose for which the easement was  
13 granted, including easements over, under, through, and across  
14 land bordering the ocean and easements for any governmental or  
15 public utility purpose or for chilled water and seawater  
16 distribution systems for renewable energy seawater air  
17 conditioning district cooling systems."

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

20 "§166E-3 **Transfer and management of non-agricultural park**  
21 **lands and related facilities to the department of agriculture.**



(a) Upon ~~[mutual agreement and]~~ approval of the board ~~[and the board of land and natural resources]~~ :

(1) The department ~~[may]~~ shall accept the transfer of and manage ~~[certain qualifying]~~ encumbered non-agricultural park lands~~[,]~~, subject to the suitability of the land for agricultural activities and use, as determined by the board; and

(2) Certain assets, including position counts, related to the management of existing encumbered and unencumbered non-agricultural park lands and related facilities shall be transferred to the department~~[,]~~; provided that designated conservation lands not in current agricultural use shall remain under the jurisdiction of the department of land and natural resources.

(b) The department shall administer a program to manage the transferred non-agricultural park lands under rules adopted by the board pursuant to chapter 91. The program and its rules shall be separate and distinct from the agricultural park program and its rules. Non-agricultural park lands are not the same as, and shall not be selected or managed as ~~[are]~~, lands 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. A lease issued under this  
6 section shall be subject to any easement or right of entry  
7 established to allow access for conservation activities,  
8 hunting, gathering, and recreation. The lessee shall cooperate  
9 with the rules and regulations of the appropriate soil and water  
10 conservation district and department in implementing  
11 conservation programs and initiatives. Lessees shall at all  
12 times practice good husbandry. If conservation resources in  
13 need of preservation or protection are identified by the  
14 department on the lands subject to the lease, the lessee shall  
15 develop a conservation program and a plan to address those  
16 concerns. The conservation program shall be run in accordance  
17 with a conservation plan, which shall be submitted to the  
18 chairperson of the board for acceptance within one year  
19 following lease commencement. The conservation plan shall  
20 include but not be limited to land clearing practices, cropping  
21 systems, irrigation systems, drainage, noxious weed control, and



other practices and systems needed to protect the land against deterioration and to prevent environmental degradation; provided that this requirement shall be waived for leases with little or no apparent conservation problems when verified by the appropriate soil and water conservation district. In the event the activities of the lessee under this section shall be found to be unsatisfactory to the department, the department shall notify the lessee and the lessee shall remedy any issue and submit satisfactory proof to the department within sixty days of receiving notice from the department. Notwithstanding any other law to the contrary, the program shall include the following conditions pertaining to encumbered non-agricultural park lands:

- (1) The lessee or permittee shall perform in full compliance with the existing lease or permit;
- (2) The lessee or permittee shall not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county;
- (3) The lessee's or permittee's agricultural operation shall be economically viable as specified by the board; and



(4) No encumbered or unencumbered non-agricultural park lands 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, and country clubs.

The transfer of non-agricultural park lands shall be done in a manner to be determined by the board of agriculture.

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

(d) Before any transfer of certain qualifying non-agricultural park lands, the department may request from the department of land and natural resources any information related to the establishment of necessary and reasonable easements upon the lands."

SECTION 5. (a) The department of land and natural resources shall seek approval from the board of land and natural resources and the board of agriculture prior to the removal of





1 any land designated for pasture leases for reforestation or  
2 other public purposes. If withdrawal is approved by both  
3 boards, adequate notice of not less than one year shall be  
4 provided to the then-current lessee or permittee.

5 (b) Removal of any land pursuant to this section is  
6 subject to the prior approval by the board of land and natural  
7 resources of a feasible and funded action plan submitted by the  
8 division of forestry and wildlife for reforestation or other  
9 conservation purposes on current pasture lease lands.

10 SECTION 6. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13 SECTION 7. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

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



**Report Title:**

Department of Agriculture; Department of Land and Natural Resources; Non-agricultural Park Lands; Transfer; Easements

**Description:**

Exempts easements granted over public lands affecting the transfer of undeveloped public lands between the department of land and natural resources and the department of agriculture, pursuant to Act 90, from formal county subdivision process and approval requirements. Before the transfer of non-agricultural park lands, authorizes the department of agriculture to request information from the department of land and natural resources related to the establishment of necessary and reasonable easements upon the lands. Requires the Department of Agriculture to accept the transfer of and manage certain encumbered non-conservation, non-agricultural park lands, including pasture leases. Requires the Department of Agriculture, prior to offering a lease, to inquire with the Department of Land and Natural Resources regarding any easements required for access to landlocked forest reserves or other assets on the lands subject to the lease. Requires the lessee to develop a conservation program and plan if conservation resources exist on the land. Requires approval from the Board of Land and Natural Resources and the Board of Agriculture before removing pasture lands for reforestation, or other public purposes. Effective 7/1/2050. (SD1)

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