

JAN 19 2022

A BILL FOR AN ACT

RELATING TO LAND MANAGEMENT.

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

PART I

SECTION 1. The legislature finds that Act 90, Session Laws of Hawaii 2003 (Act 90), was enacted to transfer certain non-agricultural park lands from the department of land and natural resources to the department of agriculture. The final report from the Act 90 working group, established by Act 139, Session Laws of Hawaii 2021, finds that lands under the department of land and natural resources used for the primary and substantial management objective of agricultural production should be transferred to the department of agriculture following the processes and conditions set forth in Act 90, Session Laws of Hawaii 2003.

The Act 90 working group final report further finds that improved collaborative working relationships between the department of land and natural resources, the department of agriculture, and lessees of multi-use agricultural lands will facilitate the management or co-management of department of land



1 and natural resources multi-use parcels to benefit public
2 values, including food production, conservation, and natural
3 resource management.

4 The legislature further finds that article XI, section 10,
5 of the Hawaii State Constitution, establishes that "the public
6 lands shall be used for the development of farm and
7 homeownership on as a widespread a basis as possible, in
8 accordance with procedures and limitations prescribed by law."

9 Therefore, the legislature finds that certain non-
10 conservation designated public lands classified for agricultural
11 use by the department of land and natural resources should be
12 transferred to the department of agriculture, for the purposes
13 and in a manner consistent with article XI, section 10, of the
14 Hawaii State Constitution.

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:



(1) Repealing the requirements that transfers of certain public lands classified for agricultural use by the department of land and natural resources shall receive approval of the board of land and natural resources and the board of agriculture prior to transfer to the department of agriculture and that transfers be done in a manner determined by the board of agriculture;

(2) Requiring the department of agriculture to accept the transfer of and manage certain qualifying non-conservation, non-agricultural park lands; and

(3) Requiring the department of agriculture, prior to offering a lease, to inquire with the department of land and natural resources regarding any easements required for the department of land and natural resources to access its landlocked forest reserves or other department of land and natural resources assets on the lands subject to the lease.

SECTION 3. Section 166E-1, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~166E-1] **Legislative findings.** The legislature finds that article XI, section 10, of the Hawaii State



1 Constitution establishes that "the public lands shall be used
2 for the development of farm and homeownership on as widespread a
3 basis as possible, in accordance with procedures and limitations
4 prescribed by law".

5 Therefore, the legislature finds that certain public lands
6 classified for agricultural use by the department of land and
7 natural resources should be transferred to the department of
8 agriculture[, ~~with the approval of the board of land and natural~~
9 ~~resources and the board of agriculture,~~] for purposes and in a
10 manner consistent with article XI, section 10, of the state
11 constitution.

12 The purpose of this chapter is to ensure the long-term
13 productive use of public lands leased or available to be leased
14 by the department of land and natural resources for agricultural
15 purposes by allowing these lands to be transferred to and
16 managed by the department of agriculture."

17 SECTION 4. Section 166E-3, Hawaii Revised Statutes, is
18 amended by amending subsections (a) and (b) to read as follows:

19 "(a) [~~Upon mutual agreement and approval of the board and~~
20 ~~the board of land and natural resources.~~]



1 ~~(1)~~] The department ~~[may]~~ shall accept the transfer of and
2 manage certain qualifying non-agricultural park lands;
3 ~~[and~~

4 ~~(2)~~] provided that designated conservation lands shall
5 remain under the jurisdiction of the department of
6 land and natural resources. Certain assets, including
7 position counts, related to the management of existing
8 encumbered and unencumbered non-agricultural park
9 lands and related facilities shall be transferred to
10 the department.

11 (b) The department shall administer a program to manage
12 the transferred non-agricultural park lands under rules adopted
13 by the board pursuant to chapter 91. The program and its rules
14 shall be separate and distinct from the agricultural park
15 program and its rules. Non-agricultural park lands are not the
16 same as, and shall not be selected or managed as ~~[are]~~, lands
17 under agricultural park leases. Prior to offering a lease, the
18 department shall inquire with the department of land and natural
19 resources regarding any easements required by the department of
20 land and natural resources to access landlocked forest reserves
21 or other assets of the department of land and natural resources



1 on the lands subject to the lease. Notwithstanding any other
2 law to the contrary, the program shall include the following
3 conditions pertaining to encumbered non-agricultural park lands:

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

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

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

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

18 ~~[The transfer of non-agricultural park lands shall be done in a~~
19 ~~manner to be determined by the board of agriculture.] "~~

20 SECTION 5. Section 166E-6, Hawaii Revised Statutes, is
21 repealed.



~~["§166E-6 Rules. The board shall adopt rules pursuant to chapter 91, including eligibility requirements for each disposition and applicant qualifications, to effectuate the purposes of this chapter."]~~

5 PART III

SECTION 6. The purpose of this part is to authorize 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 are the responsibility of the board of land and natural resources and department of agriculture to promote, such as food production and natural resource conservation and stewardship.

13 SECTION 7. Section 171-36, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§171-36 Lease restrictions; generally. (a) Except as
16 otherwise provided, the following restrictions shall apply to
17 all leases:

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

19 (2) No lease shall be for a longer term than sixty-five

20 years, except in the case of a residential leasehold,

21 which may provide for an initial term of fifty-five



1 years with the privilege of extension to meet the
2 requirements of the Federal Housing Administration,
3 Federal National Mortgage Association, Federal Land
4 Bank of Berkeley, Federal Intermediate Credit Bank of
5 Berkeley, Berkeley Bank for Cooperatives, or
6 Department of Veterans Affairs requirements; provided
7 that the aggregate of the initial term and extension
8 shall in no event exceed seventy-five years;

9 (3) No lease shall be made for any land under a lease that
10 has more than two years to run;

11 (4) No lease shall be made to any person who is in arrears
12 in the payment of taxes, rents, or other obligations
13 owed to the State or any county;

14 (5) No lease shall be transferable or assignable, except
15 by devise, bequest, or intestate succession; provided
16 that with the approval of the board, the assignment
17 and transfer of a lease or unit thereof may be made in
18 accordance with current industry standards, as
19 determined by the board; provided further that prior
20 to the approval of any assignment of lease, the board
21 shall have the right to review and approve the



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

- 13 (6) The lessee shall not sublet the whole or any part of
14 the demised premises, except with the approval of the
15 board; provided that prior to the approval, the board
16 shall have the right to review and approve the rent to
17 be charged to the sublessee; provided further that in
18 the case where the lessee is required to pay rent
19 based on a percentage of its gross receipts, the
20 receipts of the sublessee shall be included as part of
21 the lessee's gross receipts; provided further that the



1 board shall have the right to review and, if
2 necessary, revise the rent of the demised premises
3 based upon the rental rate charged to the sublessee,
4 including the percentage rent, if applicable, and
5 provided that the rent may not be revised downward;

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

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

11 (9) No lease of public lands, including submerged lands,
12 or any extension of any lease of public lands shall be
13 issued by the State to any person to construct, use,
14 or maintain a sunbathing or swimming pier or to use
15 the lands for those purposes, unless the lease, or any
16 extension thereof, contains provisions permitting the
17 general public to use the pier facilities on the
18 public lands and requiring that a sign or signs be
19 placed on the pier, clearly visible to the public,
20 that indicates the public's right to the use of the
21 pier. The board, at the earliest practicable date,



1 and where legally possible, shall cause all existing
2 leases to be amended to conform to this paragraph.

3 The term "lease", for the purposes of this paragraph,
4 includes month-to-month rental agreements and similar
5 tenancies.

6 (b) The board, [~~from time to time,~~] upon the issuance or
7 during the term of any intensive agricultural, aquaculture,
8 commercial, mariculture, special livestock, pasture, or
9 industrial lease, [~~may~~] shall:

10 (1) Modify or eliminate any of the restrictions specified
11 in subsection (a);

12 (2) Extend or modify the fixed rental period of the lease;
13 provided that the aggregate of the initial term and
14 any extension granted shall not exceed sixty-five
15 years; or

16 (3) Extend the term of the lease,
17 to the extent necessary to qualify the lease for mortgage
18 lending or guaranty purposes with any federal mortgage lending
19 agency, to qualify the lessee for any state or private lending
20 institution loan, private loan guaranteed by the State, or any
21 loan in which the State and any private lender participates, or



1 to amortize the cost of substantial improvements to the demised
2 premises that are paid for by the lessee without institutional
3 financing.

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

9 (1) The demised premises have been used substantially for
10 the purpose for which they were originally leased;

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

13 (3) In the event of a reopening, the rental for any
14 ensuing period shall be the fair market rental at the
15 time of reopening;

16 (4) Any federal or private lending institution shall be
17 qualified to do business in the State;

18 (5) Proceeds of any mortgage or loan shall be used solely
19 for the operations or improvements on the demised
20 premises;



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

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

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

(1) The application of the lessee;

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



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

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

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

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



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

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

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

7 (3) The rental shall not be less than the rental for the
8 preceding term;

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

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

15 (g) Any provision of this chapter to the contrary
16 notwithstanding, the board may amend and extend existing pasture
17 leases in furtherance of public purposes that are the
18 responsibility of the department and the department of
19 agriculture to promote, including, without limitation, the
20 preservation of existing native forest, reforestation for
21 watershed enhancement and forest carbon sequestration



1 opportunities, facilitation of public hunting, promotion of
2 sustainable food production, establishment and maintenance of
3 public access to landlocked reserves, enhancement of public
4 recreational opportunities, protection and propagation of
5 current biological and other significant resources, and
6 preservation and enhancement of natural resource and public use
7 values; provided that:

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

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

13 (3) The board may consider key characteristics of public
14 lands most likely to benefit from the amendment and
15 extension of pasture leases, identification of public
16 purposes to be promoted through lease amendment and
17 extension, a description of the types of lessee
18 obligations regarding natural resource conservation
19 and stewardship that will serve to achieve the
20 identified public purposes, a statement of the types
21 of lease amendments that are desirable to promote



1 these public purposes, eligibility requirements for
2 pasture lessees, and applicant qualifications.

3 The board may set the lease rent for the period of the
4 lease term occurring after an amendment under this subsection on
5 terms and conditions as the board may determine, including but
6 not limited to a value that incentivizes or otherwise promotes
7 ranching operations compatible with the public purposes that are
8 the responsibility of the department to promote. In arriving at
9 a rental value, the board may also consider the specified use of
10 the land; any restriction on grazing or other beneficial use of
11 the land; or portions thereof by lessee; any conservation or
12 stewardship services required to be performed by the lessee
13 under the amended lease; and any withdrawal of lands from the
14 lease premises. If an independent appraisal is procured to
15 determine rent for an amended pasture lease, the board shall
16 apply a lower rate of return if warranted after consideration of
17 the public purpose served by the lease, use restrictions
18 thereunder, and any obligation of the lessee to provide
19 conservation or stewardship services."

20 SECTION 8. Section 171-59, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§171-59 Disposition by negotiation. (a) A lease of
2 public land may be disposed of through negotiation upon a
3 finding by the board of land and natural resources that the
4 public interest demands it. Where the public land is being
5 sought under this section by a sugar or pineapple company, and
6 the company is the owner or operator of a mill or cannery, then,
7 for the purposes of this section, the economic unit shall be
8 that acreage of public land which when taken together with the
9 lands already owned or controlled or available to the company,
10 when cultivated is found by the board to be necessary for the
11 company's optimum mill or cannery operation. In all other
12 cases, public land to be sold under this section shall be an
13 economic unit as provided in section 171-33(3).

14 After a determination is made to negotiate the disposition
15 of a lease, the board shall:

- 16 (1) Give public notice as in public auction, in accordance
17 with the procedure set forth in section 171-16(a), of
18 its intention to lease public land through negotiation
19 setting forth the minimum conditions thereunder, the
20 use for which the public land will be leased. Any
21 person interested in securing the lease shall file an



1 application with the board not later than forty-five
2 days after the first publication of the notice;

3 (2) Establish reasonable criteria for the selection of the
4 lessee; provided that where the intended use of the
5 land is agriculture, the department of agriculture
6 shall establish the criteria;

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



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

4 If two or more applicants meet the criteria for the
5 selection of the lessee, the board shall select the lessee who
6 submits the highest offer contained in a sealed bid deposited
7 with the board.

8 (b) Disposition of public lands for airline, aircraft,
9 airport-related, agricultural processing, cattle feed
10 production, aquaculture, marine, maritime, and maritime-related
11 operations may be negotiated without regard to the limitations
12 set forth in subsection (a) and section 171-16(c); provided
13 that:

14 (1) The disposition encourages competition within the
15 aeronautical, airport-related, agricultural,
16 aquaculture, maritime, and maritime-related
17 operations;

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



1 (A) Maritime and maritime-related operations, which
2 may provide for a maximum term of seventy years;
3 and

4 (B) Aquaculture operations, which may provide for a
5 maximum term of sixty-five years; provided that
6 aquaculture operations in good standing may seek
7 to renew a lease issued under this section and,
8 during the lease term, may engage in supportive
9 activities that are related to or integrated with
10 aquaculture; and

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

14 For the purposes of this subsection:

15 "Agricultural processing" means the processing of
16 agricultural products, including dairying, grown, raised, or
17 produced in Hawaii.

18 "Airport-related" means a purpose or activity that requires
19 air transportation to achieve that purpose or activity; or an
20 activity that generates revenue for the airport system as
21 provided in section 261-7.



1 "Aquaculture" means the propagation, cultivation, or
2 farming of aquatic plants and animals in controlled or selected
3 environments for research, commercial, or stocking purposes,
4 including aquaponics or any growing of plants or animals with
5 aquaculture effluents.

6 "Maritime-related" means a purpose or activity that
7 requires and is directly related to the loading, off-loading,
8 storage, or distribution of goods and services of the maritime
9 industry.

10 (c) Any provision of this chapter to the contrary
11 notwithstanding, the board may issue new pasture leases by
12 negotiation for lands already under pasture use when doing so
13 will further public purposes that are the responsibility of the
14 department and the department of agriculture to promote,
15 including, without limitation, the preservation of existing
16 native forest, reforestation for watershed enhancement and
17 forest carbon sequestration opportunities, facilitation of
18 public hunting, promotion of sustainable food production
19 establishment and maintenance of public access to landlocked
20 reserves, enhancement of public recreational opportunities,
21 protection and propagation of current biological and other



1 significant resources, and preservation and enhancement of
2 natural resource and public use values; provided that:

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

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

16 The board may set the rent for pastoral and agricultural
17 leases issued under this subsection on such terms and conditions
18 as the board may determine, including but not limited to a value
19 that incentivizes or otherwise promotes ranching operations
20 compatible with the public purposes that are the responsibility
21 of the department to promote. In arriving at a rental value,



1 the board may also consider the specified use of the land; any
2 restriction on grazing or other beneficial uses of the land or
3 portions thereof by lessee; and any conservation or stewardship
4 services required to be performed by the lessee under the lease.
5 If an independent appraisal is procured to determine rent for a
6 pasture lease, the board shall apply a lower rate of return if
7 warranted after consideration of the public purpose served by
8 the lease, use restrictions thereunder, and any obligation of
9 the lessee to provide conservation or stewardship services."

10 PART IV

11 SECTION 9. The purpose of this part is to balance the
12 State's commitment to agriculture as a priority and the State's
13 dedication to land stewardship and reforestation by requiring
14 approval by the board of land and natural resources prior to
15 removal of pasture lands for reforestation purposes.

16 SECTION 10. The department of land and natural resources'
17 division of forestry and wildlife must seek approval from the
18 board of land and natural resources prior to the removal of any
19 land designated for pasture leases for reforestation purposes.



The division of forestry and wildlife shall submit a funded action plan for reforestation purposes on current pasture lease lands to the board of land and natural resources for approval.

PART V

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

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

SECTION 13. This Act shall take effect upon its approval.

INTRODUCED BY:

Thomas R. Mowye



S.B. NO. 2068

Report Title:

Department of Agriculture; Department of Land and Natural Resources; Pasture Leases; Land Transfers; Division of Forestry and Wildlife; Reforestation

Description:

Repeals board approval requirements for transfers of certain public lands classified for agricultural use by the Department of Land and Natural Resources to the Department of Agriculture. Requires the Department of Agriculture to accept the transfer of and manage certain qualifying non-conservation, non-agricultural park lands. 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 Board of Land and Natural Resources to amend and extend certain leases for the lease to qualify for certain financing. 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. Requires the Division of Forestry and Wildlife to seek approval from the Board of Land and Natural Resources before removing pasture lands for reforestation. Requires the Division of Forestry and Wildlife to submit a funded action plan for reforestation on current pasture lands.

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