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## 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 state agricultural  
2 lands are a key resource that can be used to meet the State's  
3 goals for economic diversification and food self-sufficiency.  
4 In order to support farmers on these lands, the State subsidizes  
5 lessees by providing the leases below market rates and, in some  
6 cases, providing lower-cost agricultural water. The State  
7 invests in training new farmers, but these farmers often  
8 experience difficulty in obtaining affordable land to farm after  
9 completing their training. State agricultural land that would  
10 otherwise be available to prospective farmers may be tied up in  
11 long-term leases that are not productive. For example, the land  
12 may be used primarily as a residence, or the land may be farmed  
13 with an intensity or using methods that are not highly  
14 productive.

15           In addition, lessees who obtain a state agricultural lease  
16 in high-demand locations can convert their lease into a windfall  
17 profit above and beyond their investment in the property. This



1 windfall profit is an unintended transfer of wealth from the  
2 State to individual lessees. This situation also causes the  
3 transfers of leases to the highest bidder rather than to the  
4 farmers best able to use the land for production.

5 The legislature further finds that state agricultural lands  
6 should not remain in the possession of lessees or successors to  
7 lessees who are unable to farm the land productively according  
8 to the plan for which the original lease was granted. In those  
9 cases, such leases should be terminated.

10 The purpose of this Act is to update certain state leasing  
11 statutes to maximize the benefit to the State of agricultural  
12 lands and to help the State achieve its economic and food  
13 production goals.

14 SECTION 2. Section 166E-5, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§166E-5 Extension of qualified and encumbered non-**  
17 **agricultural park lands transferred to and managed by the**  
18 **department.** Notwithstanding chapter 171[7] and except as  
19 provided in section 166E-8, the board shall establish criteria  
20 and rules to allow the cancellation, renegotiation, and  
21 extension of transferred encumbrances by the department.



1 Notwithstanding any law to the contrary, qualified and  
2 encumbered non-agricultural park lands transferred to the  
3 department shall not have the respective length of term of the  
4 lease or rents reduced over the remaining fixed term of the  
5 applicable encumbrances."

6 SECTION 3. Section 166E-8, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "[+]§166E-8[+] **Disposition.** (a) Any provision of this  
9 chapter to the contrary notwithstanding, the department may  
10 dispose of:

- 11 (1) Public lands and related facilities set aside and  
12 designated for use pursuant to this chapter; and  
13 (2) Other lands and facilities under the jurisdiction of  
14 the department pursuant to section 166E-9 and  
15 notwithstanding chapter 171,

16 by negotiation, drawing of lot, conversion, or public  
17 auction[-]; provided that for new leases, the department shall  
18 first conduct a public auction to solicit interested bidders.  
19 In awarding a lease through public auction, the department shall  
20 select the best-suited bidder from among all bidders, whether  
21 they are existing or prospective lessees. If there are no



1 interested bidders, the department may extend or transfer a  
2 lease, without public auction, at the prevailing market rate.

3 Except as provided by subsection (d), the department shall  
4 dispose of public lands by lease.

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

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

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

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

18 (B) The premises are fully used in the production of  
19 crops or products for which the disposition was  
20 granted;



- 1 (3) The lessee shall comply with all federal and state  
2 laws regarding environmental quality control;
- 3 (4) The board shall:
- 4 (A) Determine the specific uses for which the  
5 disposition is intended;
- 6 (B) Parcel the land into minimum size economic units  
7 sufficient for the intended uses;
- 8 (C) Make, or require the lessee to make, improvements  
9 that are required to achieve the intended uses;
- 10 (D) Set the upset price or lease rent based upon an  
11 appraised evaluation of the property value,  
12 adjustable to the specified use of the lot;
- 13 (E) Set the term of the lease that shall be not less  
14 than fifteen years nor more than [~~sixty-five~~  
15 thirty-five years, including any extension  
16 granted for mortgage lending or guarantee  
17 purposes; provided that any extension shall be  
18 not more than fifteen years; and
- 19 (F) Establish other terms and conditions it deems  
20 necessary, including but not limited to



1                   restrictions against alienation and provisions  
2                   for withdrawal by the board; and  
3       (5) Any transferee, assignee, or sublessee of a non-  
4           agricultural park lease shall first qualify as an  
5           applicant under this chapter. For the purpose of this  
6           paragraph, any transfer, assignment, sale, or other  
7           disposition of any interest, excluding a security  
8           interest, by any legal entity that holds a non-  
9           agricultural park lease shall be treated as a transfer  
10          of the non-agricultural park lease and shall be  
11          subject to the approval of the board and to reasonable  
12          terms and conditions, consistent with this chapter or  
13          rules of the board that the board may deem necessary.  
14          No transfer shall be approved by the board if the  
15          disposition of the stock or assets or other interest  
16          of the legal entity would result in the failure of the  
17          entity to qualify for a non-agricultural park land  
18          lease.  
19       (c) After notice of the breach or default as provided in  
20       rules adopted by the board consistent with section 166E-6, a



1 violation of any provision in this section shall be cause for  
2 the board to cancel the lease and take possession of the land.

3 (d) The board may issue easements, licenses, permits, and  
4 rights-of-entry for uses that are consistent with the purposes  
5 for which the lands were set aside or are otherwise subject to  
6 the authority of the department pursuant to section 166E-9.

7 (e) When the department transfers a lease, the lessee  
8 shall be fully compensated for any depreciated cost of  
9 improvements and trade fixtures if the bid equals or exceeds  
10 that amount. If the bid falls short of the depreciated cost of  
11 improvements and trade fixtures, the lessee shall receive the  
12 entire bid but no further compensation. The premium, if any,  
13 shall be credited to the State.

14 (f) If a lessee suffers a mental or physical disability or  
15 the loss of a spouse, the lessee shall submit, within twelve  
16 months of the occurrence of the event:

17 (1) Documentation to the department to demonstrate that  
18 the lessee is able to resume implementation of the  
19 original plan of development and utilization within  
20 the following twelve months; or



1       (2) An amended plan of development and utilization for  
2               consideration by the department.

3       The department shall approve an amended plan only if the  
4 plan meets standards with respect to productivity comparable to  
5 new leases being issued at that time.

6       If the documentation or amended plan is not satisfactory to  
7 the department, the lease shall be terminated at that time.

8       Twenty-four months after the occurrence of the event, the  
9 department shall review the lessee's progress toward  
10 implementation of the original plan, or the amended plan if one  
11 was approved. If the lessee is not following the original or  
12 amended plan of development and utilization, as applicable, the  
13 lease shall be terminated at that time.

14       (g) If a lease is transferred through bequest, devise, or  
15 intestate succession, the heir, devisee, or beneficiary shall  
16 submit, within twelve months of the death of the lessee:

17       (1) Documentation to the department to demonstrate that  
18               the heir, devisee, or beneficiary is able to resume  
19               implementation of the original plan of development and  
20               utilization within the following twelve months; or





1       (2) An amended plan of development and utilization for  
2               consideration by the department.

3       The department shall approve an amended plan only if the  
4 plan meets standards with respect to productivity comparable to  
5 new leases being issued at that time.

6       If the documentation or amended plan is not satisfactory to  
7 the department, the lease shall be terminated at that time.

8       Twenty-four months after the death of the lessee, the  
9 department shall review the heir, devisee, or beneficiary's  
10 progress toward implementation of the original plan, or the  
11 amended plan if one was approved. If the heir, devisee, or  
12 beneficiary is not following the original or amended plan of  
13 development and utilization, as applicable, the lease shall be  
14 terminated at that time."

15       SECTION 4. Section 166E-11, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17       "(a) [~~The~~] Subject to the requirements of section 166E-8,  
18 the department may negotiate and enter into leases with any  
19 person who:

20       (1) Holds a revocable permit for agricultural purposes;



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- 1           (2) Has formerly held an agricultural lease or a holdover  
2           lease of public land that expired within the last ten  
3           years and has continued to occupy the land; or  
4           (3) Is determined by the department to have a beneficial  
5           impact on agriculture."

6           SECTION 5. This Act does not affect rights and duties that  
7           matured, penalties that were incurred, and proceedings that were  
8           begun before its effective date.

9           SECTION 6. Statutory material to be repealed is bracketed  
10          and stricken. New statutory material is underscored.

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

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INTRODUCED BY: *Lisa Mertes*

JAN 24 2022



# H.B. NO. 1993

**Report Title:**

Agricultural Leases; Disposition

**Description:**

Updates certain state leasing statutes to maximize the benefit to the State of agricultural lands and to help the State achieve its economic and food production goals.

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

