

JAN 18 2023

A BILL FOR AN ACT

RELATING TO AQUACULTURE.

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

1 SECTION 1. The purpose of this Act is to promote economic
2 development in the State by establishing an aquacultural area
3 lease program within the department of agriculture for the
4 purpose of identifying state facilities, state lands, and state
5 marine waters that are suitable for commercial aquaculture.

6 SECTION 2. Chapter 141, Hawaii Revised Statutes, is
7 amended by adding a new section to part I to be appropriately
8 designated and to read as follows:

9 "§141- Aquacultural area lease program. (a) There is
10 established within the department an aquacultural area lease
11 program for the purpose of:

12 (1) Identifying aquacultural areas comprising state
13 facilities, state lands, state marine waters, or a
14 combination thereof that are suitable for commercial
15 aquacultural use; and

16 (2) Authorizing the department to issue leases for
17 commercial aquacultural use.



1 The department shall manage and administer the program and any
2 aquacultural area leased pursuant to the program in consultation
3 with the department of land and natural resources, the
4 agribusiness development corporation, and any other agency
5 having jurisdiction over the aquacultural area.

6 (b) The department, in identifying and selecting state
7 facilities, state lands, state marine waters, or any combination
8 thereof as aquacultural areas to be leased pursuant to this
9 section, shall:

10 (1) Hold at least one public meeting in the community in
11 which the proposed aquacultural area is situated;

12 (2) Take into consideration comments from the department
13 of land and natural resources, agribusiness
14 development corporation, and any other agency having
15 jurisdiction over the proposed aquacultural area; and

16 (3) Complete the identification and selection process by
17 June 30, 2025.

18 (c) Notwithstanding any other law to the contrary, the
19 department may lease the aquacultural areas identified and
20 selected for the program; provided that:



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- 1 (1) The lessee obtains all necessary federal, state, and
2 county permits to establish and conduct the proposed
3 aquacultural activities in the aquacultural area,
4 including a conservation district use permit issued by
5 the board of land and natural resources pursuant to
6 section 183C-6 or 190D-11, as applicable, if the
7 aquacultural area includes lands within the state land
8 use conservation district or state marine waters;
- 9 (2) The department and the lessee enter into an
10 aquacultural area lease pursuant to this section for
11 the lessee's proposed aquacultural activities in the
12 aquacultural area;
- 13 (3) The lessee uses the leased aquacultural area only for
14 aquacultural activities that are approved by the
15 department, authorized by the permits obtained
16 pursuant to paragraph (1), and set forth in the lease
17 executed pursuant to paragraph (2);
- 18 (4) The lessee's aquacultural activities in the
19 aquacultural area do not have an adverse impact on
20 existing programs of the department or other state
21 departments or agencies, including the project



1 facility program and agricultural projects implemented
2 by the agribusiness development corporation and the
3 marine life conservation district program, shoreline
4 fisheries management area program, and the natural
5 area reserve program administered by the department of
6 land and natural resources;

7 (5) The lessee's aquacultural activities in the
8 aquacultural area do not abridge, alter, conflict
9 with, or impair konohiki fishing rights recognized in
10 sections 187A-23 and 190D-24, including the right to
11 sublease private konohiki fishing grounds for marine
12 activities;

13 (6) The leasing of the aquacultural area does not
14 adversely impact the public's use and enjoyment of the
15 reefs in the state marine waters;

16 (7) The lessee is in compliance with all applicable
17 federal, state, and county statutes, ordinances, and
18 rules;

19 (8) The department makes a determination that the lease is
20 for commercial use; and



1 (9) Any lease entered into by the department pursuant to
2 this section shall be fully executed no later than
3 June 30, 2033.

4 (d) Leases issued by the department shall:

5 (1) Specify the term of the lease and the nature of the
6 exclusive use of the aquacultural area being granted;

7 (2) Specify the aquacultural activities permitted to be
8 conducted in the aquacultural area pursuant to the
9 lease; provided that the lease shall be issued only
10 for aquacultural activities that are approved by the
11 department and authorized by the permits obtained
12 pursuant to subsection (c)(1);

13 (3) Specify an annual rent set by the department for the
14 leased aquacultural area; provided that the basic rent
15 charged in the lease may be supplemented by royalty
16 payments;

17 (4) Require that the lessee execute a bond conditioned
18 upon the substantial performance of the activities
19 described in the lease. The amount of the bond so
20 executed shall be appropriate to the size, scale, and



1 risk of the activity for which the lease is granted,
2 and shall be sufficient to:

3 (A) Protect the public interest in the event of the
4 removal of any structures or aquatic plants or
5 animals cultivated; and

6 (B) Restore or remediate the facilities, lands, and
7 waters to the satisfaction of the department in
8 and upon the leased aquacultural areas if the
9 lease is forfeited for nonperformance or the
10 department requires the removal or eradication of
11 aquatic plants or animals pursuant to paragraph
12 (8);

13 (5) Specify that if a lessee abandons a leased
14 aquacultural area, the department may order the
15 removal or sale at public auction of all improvements,
16 assets, aquatic plants or animals, and equipment
17 remaining in and upon the leased aquacultural area,
18 and shall transmit to the aquacultural development
19 special fund, established by section 141-54, the
20 entire amount received from any public auction and any
21 proceeds received from the lessee's performance bond.



1 Alternatively, the department may permit the use of
2 the improvements, assets, plants or animals, and
3 equipment for purposes that benefit the general
4 public;

5 (6) Specify that the aquatic plants or animals described
6 in the lease, which are to be cultivated and contained
7 within the leased aquacultural area, are the exclusive
8 harvest of the lessee; provided that any plant or
9 animal that escapes from the leased aquacultural area
10 and is not clearly identifiable as the property of the
11 lessee, shall become common property and may be taken
12 or caught by any person, subject to the fishing laws
13 of the State, without violating the rights of the
14 lessee;

15 (7) Specify that:

16 (A) The lessee is responsible for the removal of any
17 cultivated aquatic plants or animals found
18 outside the leased aquacultural area but within
19 state facilities, state lands, or state marine
20 waters, if removal is required to protect the



1 environment or public health and safety, and
2 removal is demanded by the department;
3 (B) The lessee is solely responsible for all costs of
4 removal of the aquatic plants or animals whether
5 within or outside of the leased aquacultural
6 area; and
7 (C) If action is required by the department to
8 eradicate escaped aquatic plants or animals, all
9 costs of eradication shall be borne by the
10 lessee; provided that the costs borne by the
11 lessee shall be no greater than the amount of the
12 bond required under paragraph (5);
13 (8) Specify that, if the chairperson finds or has
14 reasonable cause to believe that an activity conducted
15 by the lessee in or upon the aquacultural area
16 described in the lease is causing an immediate danger
17 to human or marine life or the environment of the
18 aquacultural and surrounding areas, the chairperson
19 may direct a temporary or permanent suspension of
20 aquacultural activities in the affected aquacultural
21 area. Upon direction of the chairperson, the



1 department shall immediately order the lessee or
2 lessees affected by the notice to show cause why their
3 activities should not be terminated, or why any
4 structures, cultivated aquatic plants or animals, or
5 equipment should not be removed from the aquacultural
6 area. The department shall proceed to hold a public
7 hearing and issue its order with respect to the
8 hearing within a reasonable period. In its order
9 following the hearing, the department may direct a
10 temporary or permanent suspension of commercial or
11 research activities in the affected aquacultural area,
12 removal of equipment or cultivated aquatic plants or
13 animals, or other measures as the department deems
14 appropriate for protection of human or marine life and
15 environment of the aquacultural area, including
16 forfeiture to and destruction by the State of any
17 aquatic plant or animal species;
18 (9) Specify that the lease may be assigned in whole or in
19 part, or amended; provided that the department
20 determines that the assignment or amendment is in the
21 public interest and meets the provisions of this



1 section and consents to the assignments. The
2 department may consent to the mortgage of a lease
3 pursuant to section 171-22;

4 (10) Specify that the lease may be revoked by the
5 department for violation of any lease provision. The
6 department shall deliver a written notice of the
7 breach or default of any lease agreement by registered
8 or certified mail to the party in default and to each
9 holder of record having any security interest in the
10 leased aquacultural area, making demand upon the party
11 to cure or remedy the breach or default within sixty
12 days from the date of receipt of the notice. Upon
13 failure of the party to cure or remedy the breach or
14 default within sixty days from the date of receipt of
15 the notice, or within any additional period the
16 department may allow for good cause, the department
17 may revoke the lease; and

18 (11) Contain a statement describing the degree of
19 exclusivity or access to the leased aquacultural area
20 by the public that will be based on an analysis of the
21 user listing and descriptions provided in the



1 application, and comments made by the public and in
2 consideration of, but not limited to, the following:
3 compatibility of the operation with existing uses,
4 perceived liability to the lessee and the public, and
5 perceived risk to the lessee's investment.

6 (e) Leases issued by the department may:

7 (1) Specify that failure of the lessee to substantially
8 perform the activities for which the lease was granted
9 shall constitute grounds for revocation of the lease
10 and forfeiture to the State of all structures and all
11 aquatic plants or animals cultivated in and upon the
12 leased aquacultural area;

13 (2) Specify that the lessee shall construct and maintain
14 gates, openings, or lanes at reasonable distances from
15 one another throughout a leased aquacultural area that
16 includes surface waters and in which any type of
17 enclosure is an obstacle to free navigation, unless
18 public transit in or through the enclosed waters will
19 cause undue interference with the operation being
20 conducted by the lessee and authorized by the lease
21 within the leased aquacultural area;



- 1 (3) Require, where necessary, that:
- 2 (A) All lessees mark off the areas under lease by
- 3 appropriate ranges, monuments, stakes, buoys,
- 4 fences, or any other devices placed so that they
- 5 do not interfere unnecessarily with navigation
- 6 and other traditional uses of the water surface;
- 7 (B) All lessees identify the aquacultural area under
- 8 lease and the names of the lessees on signs
- 9 appropriately placed pursuant to specifications
- 10 established by the department; and
- 11 (C) All limitations upon the use by the public of an
- 12 aquacultural area under lease shall be clearly
- 13 posted by the lessee pursuant to specifications
- 14 established by the department; and
- 15 (4) Include other terms and conditions as the department
- 16 deems advisable to effectuate the purposes of the
- 17 state constitution and this section.
- 18 (f) The chairperson or chairperson's authorized agents
- 19 shall have the authority to enter and inspect any and all
- 20 aquacultural areas leased by the department for the purpose of



1 determining compliance with the terms and provisions of any
2 lease issued under this section.

3 (g) A person who wishes to obtain a lease for an
4 aquacultural area pursuant to this section shall request an
5 aquacultural area lease from the department. Upon receipt of a
6 completed application and authorization of a lease, the
7 department shall:

8 (1) Negotiate with and grant a lease to the applicant; or

9 (2) Conduct a public auction and grant the lease to the
10 highest qualified bidder.

11 Public auctions shall be conducted in accordance with
12 chapter 171. If an auction is held and the applicant submitting
13 a completed application is not the highest qualified bidder, the
14 department shall require the highest qualified bidder to
15 indemnify the applicant for all legitimate costs incurred in the
16 preparation of any environmental assessment or environmental
17 impact statement included in the application pursuant to chapter
18 343 and the rules adopted thereunder. In establishing and
19 following internal procedures for lease applications, the
20 department shall attempt to minimize costs to those applicants
21 submitting completed applications. The department shall not



1 revoke or modify its approval of an application in a way that
2 invalidates, impairs, limits, or affects, directly or
3 indirectly, in whole or in part, the rights of a lessee as set
4 forth in the lease granted to the lessee pursuant to this
5 section.

6 (h) The program may use the moneys in the aquaculture
7 development special fund established by section 141-54 to carry
8 out the purposes of this section, including hiring the necessary
9 employees, specialists, and consultants. The revenues obtained
10 from the leasing of aquacultural areas pursuant to this section
11 shall be deposited into the aquaculture development special
12 fund; provided that the portion of revenues subject to chapter
13 10, shall be deposited into the public land trust fund as
14 provided by law.

15 (i) Nothing in this section shall preclude the department
16 from working with and receiving assistance from any other
17 department or agency in carrying out the purposes of this
18 section. If state facilities, state lands, and state marine
19 waters under the control and management of other agencies are
20 required by the department for purposes of enforcing this
21 section, the agency having the control and management of those



1 required facilities, lands, and waters, upon request by the
2 department, may lease the lands and waters to the department
3 upon the terms and conditions as may be agreed to by the
4 parties. Notwithstanding the foregoing, no public lands shall
5 be leased to the department if the lease would impair any
6 covenant between the State or any county, or any department
7 thereof, and the holders of bonds issued by the State or the
8 county or department.

9 (j) Any person who conducts, in an aquacultural area, any
10 aquacultural activity that is not permitted by a lease granted
11 to that person by the department, or who conducts these
12 activities in or upon aquacultural areas without having obtained
13 the approval of the department, shall be fined not more than
14 \$10,000 for each separate offense. Each day of violation shall
15 constitute a separate offense. Any action taken to impose or
16 collect the penalty provided for in this section shall be
17 considered a civil action.

18 (k) Any person who wilfully or recklessly damages,
19 disturbs, or interferes with any aquacultural activity that has
20 been permitted in a lease granted by the department, or who
21 wilfully or recklessly damages, disturbs, interferes with,



1 takes, or possesses any improvements, assets, aquatic plants or
2 animals, or equipment in an aquacultural area leased to a
3 person, without the permission of that person, shall be subject
4 to civil proceedings initiated by any person damaged thereby,
5 notwithstanding the result in any criminal proceedings commenced
6 under subsection (l).

7 (l) Any person who negligently or wilfully damages,
8 disturbs, or interferes with any aquacultural activity that has
9 been permitted in a lease granted by the department, or who
10 negligently or wilfully damages, disturbs, interferes with,
11 takes, or possesses any improvements, assets, aquatic plants or
12 animals, or equipment in an aquacultural area leased to a
13 person, without the permission of that person, shall be treated
14 in accordance with the applicable provisions of chapter 708.

15 (m) Nothing in this section shall be held in any way to
16 interfere or conflict with any vested rights under or arising
17 out of any grant, lease, or license of or concerning any
18 government lands or water rights, or rights-of-way; nor shall
19 anything in this section be construed to change any rights in or
20 concerning any water upon or flowing from or through any land
21 set apart or surrendered as a forest reserve, or as depriving or



1 limiting any state officer from exercising any existing power or
2 authority or any power that may hereafter be created to deal
3 with water or water rights, or rights-of-way.

4 (n) The department shall adopt rules to effectuate the
5 purposes of this section in accordance with chapter 91.

6 (o) As used in this section, unless the context clearly
7 requires otherwise:

8 "Agency" means any federal, state, local, or foreign
9 government or any entity of any government.

10 "Aquacultural area" means state facilities, state lands,
11 state marine waters, or any combination thereof identified by
12 the department as being suitable for commercial aquaculture and
13 may include public lands transferred from the department of land
14 and natural resources to the department as non-agricultural park
15 lands pursuant to chapter 166E; provided that "aquacultural
16 areas" shall not include facilities, lands, or waters designated
17 as being necessary for national defense purposes, as determined
18 by the department of land and natural resources in consultation
19 with the appropriate federal agencies.

20 "Aquacultural activity" or "Aquaculture" means the
21 propagation, cultivation, or farming of aquatic plants and



1 animals in controlled or selected environments for commercial
2 purposes, including research, stocking, aquaponics, or any
3 growing of plants or animals with aquaculture effluents.

4 "Chairperson" means the chairperson of the board of
5 agriculture.

6 "Department" means the department of agriculture.

7 "Facility" means a building or buildings or similar
8 structure owned or leased by, or otherwise under the
9 jurisdiction of, an agency.

10 "Lease" means the agreement establishing the right to
11 possess and use an aquacultural area pursuant to this section
12 for a term of years.

13 "Lessee" means the holder of a valid aquacultural area
14 lease granted by the department pursuant to this section.

15 "Program" means the aquacultural area lease program.

16 "Public lands" has the same meaning as defined in section
17 171-2; provided that "public lands" include lands to which the
18 department holds title by way of foreclosure, voluntary
19 surrender, or otherwise, to recover moneys loaned or to recover
20 debts otherwise owed the department under chapter 167.



1 "State lands" includes all public and other lands owned or
2 in possession, use, and control of the then Territory of Hawaii
3 or the State of Hawaii, or any of its agencies.

4 "State marine waters" means all waters of the State,
5 including the water column, water surface, and state submerged
6 lands, extending from the upper reaches of the wash of the waves
7 on shore seaward to the limit of the State's police power and
8 management authority, including the United States territorial
9 sea, notwithstanding any law to the contrary.

10 "Water column" means the vertical extent of marine waters,
11 including the surface, above submerged lands."

12 SECTION 3. Section 26-16, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) The department shall:

- 15 (1) Promote the conservation, development, and utilization
16 of agricultural resources in the State;
- 17 (2) Assist the farmers of the State and any others engaged
18 in agriculture by research projects, dissemination of
19 information, crop and livestock reporting service,
20 market news service, and any other means of improving



- 1 the well-being of those engaged in agriculture and
2 increasing the productivity of the lands;
- 3 (3) Administer the programs of the State relating to
4 animal husbandry, entomology, farm credit, development
5 and promotion of agricultural products and markets,
6 and the establishment and enforcement of the rules on
7 the grading and labeling of agricultural products;
8 [and]
- 9 (4) Administer the aquaculture program under section
10 141-52 [-]; and
- 11 (5) Administer the aquacultural area lease program under
12 section 141- ."

13 SECTION 4. Section 141-54, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§141-54 Aquaculture development special fund. (a) There
16 is established in the state treasury the aquaculture development
17 special fund into which shall be deposited:

- 18 (1) Appropriations from the legislature;
- 19 (2) Moneys collected as fees for special microbiological
20 and histological procedures and expert aquaculture-
21 related services;



- 1 (3) Moneys collected from the sale of any item related to
2 aquaculture development that is purchased from the
3 department;
- 4 (4) Moneys directed to the aquaculture development program
5 from any other sources, including but not limited to
6 grants, gifts, and awards; [and]
- 7 (5) Moneys collected as fees or lease rent under the
8 aquacultural area lease program pursuant to section
9 141- , notwithstanding section 190D-33; and
- 10 [~~(5)~~] (6) Moneys derived from interest, dividend, or other
11 income from the above sources.
- 12 (b) Moneys in the aquaculture development special fund
13 shall be used to:
- 14 (1) Implement the aquatic disease management programs and
15 activities of the department, including provision of
16 state funds to match federal grants; [and]
- 17 (2) Support research and development programs and
18 activities relating to the expansion of the state
19 aquaculture industry. Research and development
20 programs and activities funded under this paragraph
21 may be conducted by department personnel or through



1 contracts with the University of Hawaii or other
2 qualified persons [–]; and

3 (3) Implement the aquacultural area lease program pursuant
4 to section 141- , including:

5 (A) Hiring the necessary employees, specialists, and
6 consultants to carry out the program; and

7 (B) Paying lease rents to agencies under the
8 aquacultural areas program pursuant to section
9 141- (i)."

10 SECTION 5. Section 190D-2, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§190D-2 Findings and purpose.** Article XI of the
13 constitution of the State of Hawaii relating to the
14 conservation, control, and development of resources, provides in
15 section 6 that the State shall have the power to manage and
16 control the marine, seabed, and other resources located within
17 the boundaries of the State, including its archipelagic waters,
18 and reserves to the State all such rights outside state
19 boundaries not specifically limited by federal or international
20 law.



1 The legislature finds that the State's marine waters offer
2 the people of Hawaii sources of energy, minerals, food, and
3 usable space. The legislature further finds that the proper
4 management and development of these ocean resources require
5 defined rights of usage and tenure.

6 The purpose of this chapter is to establish procedures for
7 the leasing of state marine waters and to guarantee property
8 rights and protection for any activities approved under these
9 procedures. Unless otherwise provided, the provisions of this
10 chapter shall not apply to leases administered by the department
11 of agriculture for the aquacultural area lease program pursuant
12 to section 141- ."

13 SECTION 6. Section 190D-33, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§190D-33 Revenues.** The revenues obtained from the
16 leasing of state marine waters pursuant to this chapter shall be
17 deposited into the special land and development fund to be used
18 for planning, research, and development of the aquaculture
19 industry; provided that the portion of revenues subject to
20 chapter 10, shall be deposited into the public land trust fund
21 as provided by law[-]; provided further that revenues obtained



1 from the leasing of state marine waters as aquacultural areas
2 pursuant section 141- shall be deposited into the aquaculture
3 development special fund established under section 141-54."

4 SECTION 7. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

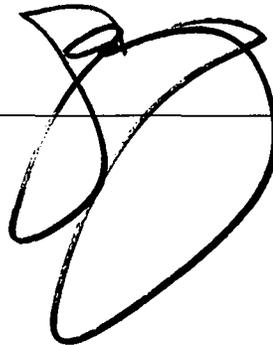
10 SECTION 8. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 9. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 10. This Act shall take effect upon its approval.

16

INTRODUCED BY: _____

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S.B. NO. 115

Report Title:

Aquaculture; Aquacultural Area Lease Program; Department of Agriculture; State Facilities; State Lands; State Marine Waters; Ocean and Submerged Lands

Description:

Establishes within the Department of Agriculture, an Aquacultural Area Lease Program for the purpose of identifying state facilities, state lands, and state marine waters that are suitable for use and lease as commercial aquacultural areas. Allows agencies having control and management of identified aquacultural areas to lease the facilities, lands, and waters to the Department of Agriculture for the purposes of the Act. Allows the program to use the moneys in the Aquaculture Development Special Fund to carry out the purposes of the Act and requires the revenues obtained from aquacultural area leases to be deposited into the Aquaculture Development Special Fund. Imposes penalties and civil and criminal liabilities. Exempts the program from being subject to the Hawaii Ocean and Submerged Lands Leasing Act.

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