A BILL FOR AN ACT

RELATING TO AGRICULTURAL ENTERPRISES.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

AGRICULTURAL ENTERPRISES

§ -1 Purpose. Article XI, section 3, of the state constitution establishes in part that the "State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands."

The legislature finds that smaller scale farming operations, particularly those associated with diversified agriculture, usually do not have ready access to nor the resources to pay for their own modern processing, packing, storage, and distribution enterprises to expand or maximize productivity of their agricultural operations. Due to global competition and the recent implementation of national food
safety standards, the department of agriculture has found it
needs to support the growth of diversified agriculture by
encouraging agricultural enterprises on the department of
agriculture's state lands through activities including planning,
designing, constructing, operating, and managing agricultural
to ensure the economic viability of agricultural
operations, as well as allowing lessees to do the
same. Therefore, the legislature finds that it is in the
State's best interests to promote and support diversified
agriculture and increase agricultural self-sufficiency by
establishing an agricultural enterprise program within the
department of agriculture, for purposes and in a manner
consistent with article XI, section 3, of the state
constitution.

The purpose of this chapter is to establish
the agricultural enterprise program within the department of
agriculture to allow the department or a lessee to plan, design,
construct, operate, manage, maintain, repair, demolish, and
remove facilities on any lands over which the department has
jurisdiction, to support and promote agriculture, and to accept
the transfer of any lands that will support an agricultural
purpose from the department of land and natural resources and to
operate or manage those resources.

$ -2 Definitions. As used in this chapter, unless the
context otherwise requires:

"Agricultural activities" means the care and production of
livestock; livestock products; poultry; poultry products;
apiary, horticultural, and floricultural products; the planting,
cultivating, and harvesting of crops or trees; and any other
activity that can demonstrate a tie to agriculture.

"Agricultural enterprise" means an activity directly and
primarily supporting the production and sale of Hawaii
agriculture.

"Agricultural enterprise lands" means agricultural lands
that are not designated as agricultural parks or non-
agricultural parks pursuant to chapter 166 or 166E,
respectively.

"Aquacultural activities" means the farming or ranching of
any plant or animal species in a controlled salt, brackish, or
freshwater environment; provided that the farm or ranch is on or
directly adjacent to land.

"Board" means the board of agriculture.

"Department" means the department of agriculture.
"Lessee" means a lessee under a lease issued by or transferred to the department, or any tenant, licensee, grantee, assignee, or other person authorized to conduct an agricultural enterprise by the board or department.

§ -3 Department's powers in general; agricultural enterprises. To support and promote agriculture, the department may:

(1) Plan, design, construct, operate, manage, maintain, repair, demolish, and remove facilities on any lands under the jurisdiction of the department;

(2) Permit a lessee to plan, design, construct, operate, manage, maintain, repair, demolish, and remove facilities on any lands under the jurisdiction of the department; and

(3) Upon mutual agreement and approval by the board and the board of land and natural resources, accept the transfer of and manage qualifying agricultural enterprises and agricultural enterprise lands from the department of land and natural resources.

§ -4 Transfer and management of agricultural enterprise lands and agricultural enterprises; agricultural enterprise

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program. (a) Upon mutual agreement and approval by the board and the board of land and natural resources:

(1) The department may accept the transfer of and manage certain qualifying agricultural enterprise lands and agricultural enterprises from the department of land and natural resources; and

(2) Certain assets, including position counts, related to the management of existing encumbered and unencumbered agricultural enterprise lands and agricultural enterprises and related facilities shall be transferred to the department.

(b) The department shall administer an agricultural enterprise program to manage the transferred agricultural enterprise lands and agricultural enterprises under rules adopted by the board pursuant to chapter 91. The program and its rules shall be separate and distinct from the respective programs and rules for agricultural parks and non-agricultural parks. Agricultural enterprise lands and agricultural enterprises shall not be the same as, and shall not be selected or managed as, lands under agricultural park or non-agricultural park leases. Notwithstanding any other law to the contrary, the agricultural enterprise program shall include the following
conditions pertaining to the transfer of encumbered or
unencumbered agricultural enterprise lands and agricultural
enterprises:

(1) As of the time of transfer:

(A) The lessee or permittee shall be in full
compliance with the existing lease or permit;

(B) 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; and

(C) The lessee's or permittee's agricultural
operation shall be economically viable as
determined by the board;

(2) No encumbered or unencumbered agricultural enterprise
lands and agricultural enterprises 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, or
country clubs; and
(3) The transfer of agricultural enterprise lands and agricultural enterprises shall be done in a manner to be determined by the board.

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

§ -5 Conversion of qualified and encumbered other agricultural lands. The department shall establish criteria and rules pursuant to chapter 91, and subject to approval by the board, may convert qualified and encumbered agricultural enterprise lands and agricultural enterprises to department leases or other forms of encumbrance.

§ -6 Extension of qualified and encumbered agricultural enterprise lands and agricultural enterprises. Notwithstanding chapter 171, the board shall establish criteria and rules to allow the cancellation, renegotiation, and extension of transferred encumbrances by the department. Notwithstanding any law to the contrary, qualified and encumbered agricultural enterprise lands and agricultural enterprises transferred to the
department shall not have the respective length of term of the
lease or rents reduced over the remaining fixed term of the
applicable encumbrances.

§ -7 Rules. The board shall adopt rules pursuant to
chapter 91, including eligibility requirements for each
disposition and applicant qualification, to effectuate the
purposes of this chapter.

§ -8 Agricultural enterprise special fund;
established. (a) There is established in the state treasury
the agricultural enterprise special fund to be administered by
the department, into which shall be deposited:

(1) Legislative appropriations to the fund; and
(2) All lease rent, fees, penalties, and any other revenue
or funds collected from agricultural enterprise lands
and agricultural enterprises, together with the
revenue or funds collected from agricultural
enterprise lands and agricultural enterprises that are
transferred, or in the process of being transferred,
to the department under this chapter.

(b) Moneys in the special fund shall be used for planning,
designing, constructing, operating, maintaining, managing,
repairing, demolishing, and removing agricultural enterprise
lands and agricultural enterprises under this chapter.

§ -9 Disposition. (a) Notwithstanding any provision of
this chapter and chapter 171 to the contrary, the department may
dispose of the following by negotiation, drawing of lots,
conversion, or public auction:

(1) Public lands and related enterprises set aside and
designated for use pursuant to this chapter; and

(2) Other lands and enterprises under the jurisdiction of
the department pursuant to section -10.

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

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

(1) All land and enterprises shall be disposed of for
purposes of supporting or promoting agricultural or
aquacultural activities;

(2) Each lessee shall derive a major portion of the
lessee's total annual income earned from the lessee's
activities on the premises; provided that this
restriction shall not apply if:
(A) Failure to meet the restriction results from mental or physical disability or the loss of a spouse; or

(B) The premises are fully used to support or promote the agricultural or aquacultural activity for which the disposition was granted;

(3) The lessee shall comply with all federal and state laws regarding environmental quality control;

(4) The board shall:

(A) Determine the specific uses for which the disposition is intended;

(B) Parcel the land into minimum size economic units sufficient for the intended uses;

(C) Make, or require the lessee to make, improvements that are necessary to achieve the intended uses;

(D) Set the upset price or lease rent based upon an appraised evaluation of the property value, adjustable to the specified use of the lot;

(E) Set the term of the lease, which shall be no less than fifteen years nor more than sixty-five

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(E) Establish other terms and conditions it deems necessary, including restrictions against alienation and provisions for withdrawal by the board; and

(5) Any transferee, assignee, or sublessee of an agricultural enterprise lease shall first qualify as an applicant under this chapter. For the purpose of this paragraph, any transfer, assignment, sale, or other disposition of any interest, excluding a security interest, by any legal entity that holds an agricultural enterprise lease shall be treated as a transfer of the agricultural enterprise lease and shall be subject to the approval of the board and to reasonable terms and conditions, consistent with this chapter and rules adopted pursuant to this chapter. No transfer shall be approved by the board if the disposition of the stock or assets or other interest of the legal entity would result in the

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failure of the entity to qualify for an agricultural enterprise lease.

(c) After notice of the breach or default as provided in rules adopted by the board consistent with section -7, a violation of any provision in this section shall be cause for the board to cancel the lease and take possession of the land, or take other action as the board, in its sole discretion, deems appropriate.

(d) The board may issue easements, licenses, permits, and rights-of-entry for uses that are consistent with the purposes for which the lands were set aside or are otherwise subject to the authority of the department pursuant to section -10.

§ -10 Authority to plan, design, develop, and manage agricultural enterprise lands and agricultural enterprises. The department, or its lessees subject to the department's approval, may plan, design, develop, and manage agricultural enterprise lands and agricultural enterprises on:

(1) Public lands set aside by executive order pursuant to section 171-11 for use as agricultural enterprise lands and agricultural enterprises;
(2) Other lands with the approval of the board that may be subject to a joint venture partnership agreement pursuant to section -11; and

(3) Lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 155-4(11).

§ -11 Agricultural enterprise lands and agricultural enterprise development. On behalf of the State or in partnership with a federal agency, a county, or a private party, the department may develop agricultural enterprise lands and agricultural enterprises.

§ -12 Lease negotiation. (a) The department may negotiate and enter into leases with any person who:

(1) Holds a revocable permit for agricultural purposes;

(2) Has formerly held an agricultural lease or a holdover lease of public land that expired within the last ten years and has continued to occupy the land; or

(3) Is determined by the department to have a beneficial impact on agriculture.

(b) Lands eligible for lease negotiations under this section are limited to lands that are:

(1) Determined to have a nexus for agricultural purposes;
(2) Set aside for agricultural or agricultural-related uses only, by the governor through an executive order, to the department; and

(3) Not needed by any state or county agency for any other public purpose.

(c) In negotiating and executing a lease as authorized, the board shall:

(1) Require the appraisal of the parcel using the Uniform Standards of Professional Appraisal Practice to determine the rental, including percentage rent;

(2) Require the payment of a premium, computed as twenty-five per cent of the annual lease rent, with the premium to be added to the annual lease rent for each year of the lease equal to the number of years the lessee has occupied the land; provided that the premium period shall not exceed seven years; and

(3) Recover from the lessee the costs of expenditures required by the department to convert the parcel into leasehold. The department shall notify in writing those eligible for lease negotiations under this section and shall inform the applicants of the terms, conditions, and restrictions provided by this
section. Any eligible person may apply for a lease by
submitting a written application to the department
within thirty days from the date of receipt of
notification; provided that the department may require
documentary proof from any applicant to determine that
the applicant meets eligibility and qualification
requirements for a lease.

§ -13 Policy. Notwithstanding chapter 171, disposition
of lands set aside for use pursuant to this chapter shall not be
subject to the prior approval of the board of land and natural
resources.

§ -14 Rights of holders of security interests.

(a) Prior board action shall be required when an institutional
lender acquires the lessee's interest through a foreclosure
sale, judicial or nonjudicial, or by way of assignment in lieu
of foreclosure, or when the institutional lender sells or causes
the sale of the lessee's interest in a lease by way of a
foreclosure sale, judicial or nonjudicial. The institutional
lender shall convey a copy of the sale or assignment as recorded
in the bureau of conveyances.

(b) Notwithstanding any other provision of this chapter,
if any lease is subject to a security interest held by an
institutional lender and if the institutional lender has given
to the board a copy of the encumbrance as recorded in the bureau
of conveyances:

(1) If the lease is canceled for violation of any non-
monetary lease term or condition, or if the lease is
deemed terminated or rejected under bankruptcy laws,
the institutional lender shall be entitled to issuance
of a new lease in its name for a term equal to the
term of the lease remaining immediately prior to the
cancellation, termination, or rejection, with all
terms and conditions being the same as in the
canceled, terminated, or rejected lease, except only
for the liens, claims, and encumbrances, if any, that
were superior to the institutional lender before the
cancellation, termination, or rejection. If a lease
is rejected or deemed rejected under bankruptcy law,
the lease shall be deemed canceled and terminated for
all purposes under state law;

(2) If the lessee's interest under a lease is transferred
to an institutional lender, including by reason of
paragraph (1), by reason of acquisition of the
lessee's interest pursuant to a foreclosure sale,
judicial or nonjudicial, and by reason of an assignment in lieu of foreclosure:

(A) The institutional lender shall be liable for the obligations of the lessee under the lease for the period of time during which the institutional lender is the holder of the lessee's interest but shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease; and

(B) Section -9(b)(1) and (2) shall not apply to the lease or the demised land during the time the institutional lender holds the lease; provided that:

(i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation, termination, or rejection to the satisfaction of the board; and

(ii) The new lease issued to the institutional lender shall terminate one hundred twenty days from the effective date of issuance, when the institutional lender shall either
sell or assign the lease, after which date section 9(b)(1) and (2) shall apply to the new lease;

(3) If there is a delinquent loan balance secured by a security interest, the lease shall not be canceled or terminated, except for cancellation by reason of default of the lessee, and no increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, shall be imposed or become payable, and no lands shall be withdrawn from the lease, except by eminent domain proceedings beyond the control of the board, except with prior written consent by the institutional lender and that consent shall not be unreasonably withheld;

and

(4) If the lease contains any provision requiring the payment of a premium to the lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender have been paid in full.
(c) Ownership of both the lease and the security interest by an institutional lender shall not effect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the estates with the consent of the board.

(d) The board may include in any consent form or document provisions consistent with the intent of this section as may be required to make a lease mortgageable or more acceptable for mortgageability by an institutional lender.

(e) The rights of a purchaser, assignee, or transferee of an institutional lender's security interest, including a junior lien holder, shall be exercisable by the purchaser, assignee, or transferee as successor in interest to the institutional lender; provided that:

(1) The purchase, assignment, or transfer shall conform with subsection (b)(4); and

(2) The purchase, assignment, or transfer of such rights shall be reserved for and exercisable only by an institutional lender.

Other purchasers shall not be precluded from acquiring the institutional lender's security interest but shall not have
exercisable rights as successor in interest to the original
institutional lender.

(f) For the purposes of this section:

"Institutional lender" means a federal, state, or private
lending institution, licensed to do business in the State, that
makes loans to qualified applicants on the basis of a lease
awarded for security, in whole or in part, together with any
other entity that acquires all or substantially all of an
institutional lender's loan portfolio.

"Makes loans" means lends new money or renews or extends
indebtedness owing by a qualified applicant to an institutional
lender, after June 30, 2006.

"Security interest" means any interest created or perfected
by a mortgage, assignment by way of mortgage, or by a financing
statement and encumbering a lease, land demised by the lease, or
personal property located at, affixed or to be affixed to, or
growing or to be grown upon the demised land."

SECTION 2. Section 141-1, Hawaii Revised Statutes, is
amended to read as follows:

"§141-1 Duties in general. The department of agriculture
shall:
(1) Gather, compile, and tabulate, from time to time, information and statistics concerning:

(A) Entomology and plant pathology: Insects, scales, blights, and diseases injurious or liable to become injurious to trees, plants, or other vegetation, and the ways and means of exterminating pests and diseases already in the State and preventing the introduction of pests and diseases not yet here; and

(B) General agriculture: Fruits, fibres, and useful or ornamental plants and their introduction, development, care, and manufacture or exportation, with a view to introducing, establishing, and fostering new and valuable plants and industries;

(2) Encourage and cooperate with the agricultural extension service and agricultural experiment station of the University of Hawaii and all private persons and organizations doing work of an experimental or educational character coming within the scope of the subject matter of chapters 141, 142, and 144 to 150A,
and avoid, as far as practicable, duplicating the work of those persons and organizations;

(3) Enter into contracts, cooperative agreements, or other transactions with any person, agency, or organization, public or private, as may be necessary in the conduct of the department's business and on such terms as the department may deem appropriate; provided that the department shall not obligate any funds of the State, except the funds that have been appropriated to the department. Pursuant to cooperative agreement with any authorized federal agency, employees of the cooperative agency may be designated to carry out, on behalf of the State the same as department personnel, specific duties and responsibilities under chapters 141, 142, 150A, and rules adopted pursuant to those chapters, for the effective prosecution of pest control and animal disease control and the regulation of import into the State and intrastate movement of regulated articles;

(4) Secure copies of the laws of other states, territories, and countries, and other publications germane to the subject matters of chapters 141, 142,
and 144 to 150A, and make laws and publications
available for public information and consultation;

(5) Provide buildings, grounds, apparatus, and
appurtenances necessary for the examination,
quarantine, inspection, and fumigation provided for by
chapters 141, 142, and 144 to 150A; for the obtaining,
propagation, study, and distribution of beneficial
insects, growths, and antidotes for the eradication of
insects, blights, scales, or diseases injurious to
vegetation of value and for the destruction of
injurious vegetation; and for carrying out any other
purposes of chapters 141, 142, and 144 to 150A;

(6) Formulate and recommend to the governor and
legislature additional legislation necessary or
desirable for carrying out the purposes of chapters
141, 142, and 144 to 150A;

(7) Publish at the end of each year a report of the
expenditures and proceedings of the department and of
the results achieved by the department, together with
other matters germane to chapters 141, 142, and 144 to
150A and that the department may deem proper;
(8) Administer a program of agricultural planning and
development, including the formulation and
implementation of general and special plans, including
but not limited to the functional plan for
agriculture; administer the planning, development, and
management of the agricultural park program; plan,
construct, operate, and maintain the state irrigation
water systems; plan, design, construct, operate,
manage, maintain, repair, demolish, and remove
improvements on any lands to which the department has
jurisdiction; review, interpret, and make
recommendations with respect to public policies and
actions relating to agricultural land and water use;
assist in research, evaluation, development,
enhancement, and expansion of local agricultural
industries; and serve as liaison with other public
agencies and private organizations for the above
purposes. In the foregoing, the department shall act
to conserve and protect agricultural lands and
irrigation water systems, promote diversified
agriculture, increase agricultural self-sufficiency,
and ensure the availability of agriculturally suitable
lands; and

(9) Manage, administer, and exercise control over any
public lands, as defined under section 171-2, over
which the department has jurisdiction to support,
sustain, or promote agriculture, including
specifically without limitation, those lands that are
designated important agricultural lands pursuant to
section 205-44.5, and including but not limited to
establishing priorities for the leasing of these
public lands within the department's jurisdiction."

SECTION 3. The following positions are established within
the agricultural resource management division of the department
of agriculture:

(1) One full-time equivalent (1.0 FTE) engineer V position
(SR26);

(2) One full-time equivalent (1.0 FTE) property manager V
position (SR24); and

(3) One full-time equivalent (1.0 FTE) information
technology (Band C) position (SR24).
SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $1,200,000 or so much thereof as may be necessary for fiscal year 2019-2020 to be deposited into the agricultural enterprise special fund. The sum appropriated shall be expended by the department of agriculture.

SECTION 5. There is appropriated out of the agricultural enterprise special fund the sum of $1,200,000 or so much thereof as may be necessary for fiscal year 2019-2020 for the planning, design, construction, operation, management, maintenance, repair, demolition, and removal of infrastructure on lands under the jurisdiction of the department of agriculture to support and promote agriculture, including the following positions within the agricultural resource management division:

(1) One full-time equivalent (1.0 FTE) engineer V position (SR26);

(2) One full-time equivalent (1.0 FTE) property manager V position (SR24); and

(3) One full-time equivalent (1.0 FTE) information technology (Band C) position (SR24).

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.
SECTION 6. New statutory material is underscored.

SECTION 7. This Act, upon its approval, shall take effect on July 1, 2019.

INTRODUCED BY: ________________

BY REQUEST
JAN 22 2019
Report Title:
Agricultural Enterprises; Agricultural Enterprise Special Fund; Appropriation

Description:
Establishes a new agricultural enterprise program within the department of agriculture to plan, design, construct, operate, manage, maintain, repair, demolish, and remove infrastructure on any lands under the jurisdiction of the department, to support and promote agriculture. Creates three new positions to implement the program. Establishes the agricultural enterprise special fund. Makes an appropriation. Effective 7/1/2019.
DEPARTMENT: Agriculture

TITLE: A BILL FOR AN ACT RELATING TO AGRICULTURAL ENTERPRISES.

PURPOSE: Establish an agricultural enterprise program on all lands managed by the Department ("HDOA lands") that allows ancillary and other activities related to and supportive of agriculture, without the restrictive conditions under the existing Agriculture Park (Ag Park) and Non-agricultural Park (Non-Ag Park) programs that only focus on growing organisms. The proposed program recognizes that the business of agriculture is equally as important as the production of crops and organisms. Create three (3) new positions within the Agricultural Resource Management Division to provide sufficient staffing to support the establishment and integration of this program within the Department.

MEANS: Add a new chapter to the Hawaii Revised Statutes and amend section 141-1, Hawaii Revised Statutes.

JUSTIFICATION: The Department’s mission statement is to expand Hawaii’s agricultural industry to (1) benefit the well-being of our island society through economic diversification; (2) protect its resources for agricultural production; and (3) gain greater self-sufficiency through food and renewable energy production. Under existing statutory authority, while the production of crops and organisms on HDOA are expressly promoted and allowed, it appears to be silent on the allowance of ancillary and other activities that are supportive of and important to the economic viability and success of agriculture. Establishing this program, expressly clarifying that ancillary and other related activities supporting agriculture are encouraged, and providing
sufficient staffing to implement this wholistic approach will ensure the Department can fulfill its statewide goals and objectives.

Impact on the public: Provides greater support for efficient and effective processing, storage, transport, and marketing of agricultural products to support the business of agriculture and support for research, education, and promotion of agriculture.

Impact on the department and other agencies: Allows the Department greater flexibility in using HDOA lands for all purposes that promote agricultural diversification, production, and self-sufficiency by supporting all facets of the business of agriculture. Provides the Department with more tools and assets to assist DOE farm to table programs for schools and restaurants, contribute to the Department of Business, Economic Development & Tourism’s sustainability goals for renewable energy, incorporate culturally sensitive agricultural programs and practices to support the Department of Hawaiian Home Lands, Office of Hawaiian Affairs and other native Hawaiian organizations, and adopt innovative technologies and processes to ensure the long-term success of agriculture.

GENERAL FUND: $1,200,000

OTHER FUNDS: $1,200,000 from the Agricultural Enterprise Special Fund.

PPBS PROGRAM DESIGNATION: AGR141.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: July 1, 2019.