A BILL FOR AN ACT

RELATING TO STATE LANDS.

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

SECTION 1. Section 163D-7, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Notwithstanding any provision of this chapter to the contrary, when leasing corporation-controlled agricultural land, the corporation:

(1) Corporation may contract with a financial institution chartered under chapter 412 or a federal financial institution, as defined under section 412:1-109, that transacts business in this State to provide lease management services. For the purposes of this subsection, "lease management services" includes the collection of lease rent and any other moneys owed to the corporation related to the lease of agricultural land under the corporation's control.

(2) Lease shall not be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the corporation, the
assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the corporation; provided further that prior to the approval of any assignment of lease, the corporation may review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, if a foreclosure or sale occurs, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;

(3) Lessee shall not sublet the whole or any part of the demised premises except with the approval of the corporation; provided that prior to the approval, the corporation may review and approve the rent to be
charged to the sublessee; provided further that if the
lessee is required to pay rent based on a percentage
of its gross receipts, the receipts of the sublessee
shall be included as part of the lessee's gross
receipts; provided further that the corporation may
review and, if necessary, revise the rent of the
demised premises based upon the rental rate charged to
the sublessee including the percentage rent, if
applicable, and the rent shall not be revised
downward;

(4) Corporation shall not terminate any lease or tenancy
for failure of a lessee to pay rent without first
offering the lessee a written option to establish a
payment plan approved by the corporation; and

(5) Corporation shall ensure the timely collection of
lease payments and track lessees that are in arrears
of lease payments."

SECTION 2. Section 166-6, Hawaii Revised Statutes, is
amended to read as follows:

"§166-6 Disposition. (a) Any provision of this chapter
to the contrary notwithstanding, the board may by negotiation,
drawing of lot, or public auction, directly dispose of public
lands and related facilities set aside and designated for use as
agricultural parks, and any other lands and facilities under the
jurisdiction of the department pursuant to section 166-3 and
notwithstanding chapter 171. Except as provided by subsection
(c), dispositions may be by lease and shall be subject to the
requirements set forth in rules adopted by the board in
conformity with section 166-9, and subject also to the following
limitations:

(1) The property shall be disposed of for agricultural or
    aquacultural purposes only;

(2) The lessee shall derive the major portion of the
    lessee's total annual income from the lessee's
    activities on the premises; provided that this
    restriction shall not apply if failure to meet the
    restriction results from mental or physical disability
    or the loss of a spouse, or if the premises are fully
    utilized in the production of crops or products 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 determine the specific uses for which
the disposition is intended; parcel the land into
minimum size economic units sufficient for the
intended uses; make, or require the lessee to make
improvements as are required to achieve the intended
uses; set the upset price or lease rent based upon an
appraised evaluation of the property value adjustable
as provided in rules adopted in accordance with
chapter 91 to the specified use of the lot; set the
term of the lease, which shall be not less than
fifteen years nor more than fifty-five years,
including any extension granted for mortgage lending
or guarantee purposes; and establish other terms and
conditions as it may deem necessary, including but not
limited to restrictions against alienation and
provisions for withdrawal by the board;

(5) No lease shall be made to any person who is in arrears
in the payment of taxes, rents, or other obligations
owing the State or any county; and

(6) Any transferee, assignee, or sublessee of an
agricultural park 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, of any legal entity which holds an agricultural park lease shall be treated as a transfer of the agricultural park lease and shall be subject to the approval of the board of agriculture upon reasonable terms and conditions, not inconsistent with this chapter or rules of the board, which the board may deem necessary. 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 failure of the entity to qualify for an agricultural park lease.

(b) The violation of any provision contained in this section shall be sufficient cause for the board, after [due]::

(1) Due notice of breach or default as provided in rules adopted by the board in conformance with section 166-9[7-10]; and

(2) If the basis for the cancellation of the lease is due to the lessee being in arrears of lease payments, the
lessee rejects or fails to make a timely response to a
written offer for the lessee to establish a payment
plan approved by the board,
the board shall cancel the lease and take possession of the
land.
(c) The board of agriculture may issue easements, permits,
and rights of entry covering agricultural park lands for uses
consistent with the purposes for which the lands were set aside
or are otherwise subject to the authority of the department
pursuant to section 166-3.
(d) The board of agriculture shall adopt rules pursuant to
chapter 91 to ensure the timely collection of lease payments and
to track lessees that are in arrears of lease payments."
SECTION 3. Section 171-20, Hawaii Revised Statutes, is
amended to read as follows:
"§171-20 Notice of breach or default. Except as otherwise
specifically provided in this chapter, in the event of a breach
or default of any term, covenant, restriction, or condition of
any lease or patent heretofore or hereafter issued under this
chapter, the board of land and natural resources shall deliver a
written notice of the breach or default by personal service or
by registered or certified mail to the party in default and to each holder of record having any security interest in the land covered by or subject to the lease or patent making demand upon the party to cure or remedy the breach or default within sixty days from the date of receipt of the notice; provided that where the breach involves a failure to make timely rental payments pursuant to the lease or patent heretofore or hereafter issued under this chapter, the written notice shall include a demand upon the party to cure the breach within less than sixty days, but not less than five business days, after receipt of the notice. Upon failure of the party to cure or remedy the breach or default within the time period provided herein or within any additional period as the board may allow for good cause[7] and upon failure of the lessee to establish a payment plan that the board has the sole discretion to approve, the board [may], subject to section 171-21, may exercise its rights as it may have at law or as set forth in the lease or patent."

SECTION 4. Section 171-39, Hawaii Revised Statutes, is amended to read as follows:
"§171-39 Leases; forfeiture. Upon the violation of any condition or term of any lease to be observed or performed by the lessee or tenant, including the violation of any payment plan established pursuant to section 171-20, the board of land and natural resources shall, after the notice of default as provided in section 171-20, and subject to the rights of each holder of record having a security interest as provided in section 171-21, terminate the lease or tenancy and take possession of the leased land, without demand or previous entry and without legal process, together with all improvements placed thereon and shall retain all rent paid in advance as damages for the violations."

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

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

SECTION 7. This Act shall take effect on July 1, 2150.
Report Title:
State Lands; DLNR; DOA; Agribusiness Development Corporation; Lease

Description:
Requires the Board of Agriculture and the Agribusiness Development Corporation to ensure the timely collection of lease payments, track lessees that are in arrears of lease payments, and offer payment plans for lessees in arrears. Authorizes the BLNR to allow payment plans for a breach or default of a lease or patent. Prohibits land leased by the Agribusiness Development Corporation from being assigned or sublet without Corporation approval. (HB1117 HD2)

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