



1 safety standards, the department of agriculture has found it  
2 necessary to support the growth of diversified agriculture by  
3 encouraging agricultural enterprises on the department of  
4 agriculture's lands through activities including planning,  
5 designing, constructing, operating, and managing agricultural  
6 enterprises to ensure the economic viability of agricultural  
7 operations, as well as allowing lessees to do the same.  
8 Therefore, the legislature finds that it is in the State's best  
9 interests to promote and support diversified agriculture and  
10 increase agricultural self-sufficiency by establishing an  
11 agricultural enterprise program within the department of  
12 agriculture, for the purpose of complying with the requirements  
13 of article XI, section 3, of the state constitution.

14 Accordingly, the purpose of this chapter is to authorize  
15 the department of agriculture or a lessee to plan, design,  
16 construct, operate, manage, maintain, repair, demolish, and  
17 remove infrastructure or improvements on any lands over which  
18 the department has jurisdiction, to support and promote  
19 agriculture, and to accept from the department of land and  
20 natural resources the transfer of any lands that will support an  
21 agricultural purpose and to operate or manage those resources.



1           §   -2 Definitions. As used in this chapter, unless the  
2 context otherwise requires:

3           "Agricultural activities" include:

- 4           (1) The care and production of livestock; livestock  
5                 products; poultry; poultry products; and apiary,  
6                 horticultural, and floricultural products;
- 7           (2) The planting, cultivating, and harvesting of crops or  
8                 trees; and
- 9           (3) Any other activity that is directly associated with  
10                agriculture.

11           "Agricultural enterprise" means an activity directly and  
12 primarily supporting the production and sale of agriculture in  
13 the State.

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

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



1 "Board" means the board of agriculture.

2 "Department" means the department of agriculture.

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

7 § -3 Department's powers in general; agricultural  
8 enterprises. In addition to any other powers authorized in this  
9 chapter, to support and promote agriculture, the department may:

- 10 (1) Plan, design, construct, operate, manage, maintain,  
11 repair, demolish, and remove infrastructure or  
12 improvements on any lands under the jurisdiction of  
13 the department; and  
14 (2) Permit a lessee to plan, design, construct, operate,  
15 manage, maintain, repair, demolish, and remove  
16 infrastructure or improvements on any lands under the  
17 jurisdiction of the department.

18 § -4 Transfer and management of agricultural enterprise  
19 lands and agricultural enterprises; agricultural enterprise  
20 program. (a) Upon mutual agreement and approval by the board  
21 and the board of land and natural resources:



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

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

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



1 unencumbered agricultural enterprise lands and agricultural  
2 enterprises:

3 (1) As of the time of transfer:

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

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

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

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

19 (3) The board shall determine the manner of transfer of  
20 agricultural enterprise lands and agricultural  
21 enterprises.



1           (c) For any encumbered or unencumbered agricultural  
2 enterprise lands and agricultural enterprises transferred to the  
3 department that are not being utilized or required for the  
4 public purpose stated in an executive order issued by the  
5 governor to the department pursuant to section 171-11, the order  
6 setting aside the lands shall be withdrawn and the lands shall  
7 be returned to the department of land and natural resources.

8           **§ -5 Conversion of qualified and encumbered other**  
9 **agricultural lands.** The department shall establish criteria and  
10 rules pursuant to chapter 91 and, subject to approval by the  
11 board, may convert qualified and encumbered agricultural  
12 enterprise lands and agricultural enterprises to department  
13 leases or other forms of encumbrance.

14           **§ -6 Extension of qualified and encumbered agricultural**  
15 **enterprise lands and agricultural enterprises.** Notwithstanding  
16 chapter 171, the board shall establish criteria and rules to  
17 allow the cancellation, renegotiation, and extension of  
18 transferred encumbrances by the department. Notwithstanding any  
19 law to the contrary, qualified and encumbered agricultural  
20 enterprise lands and agricultural enterprises transferred to the  
21 department shall not have the respective length of term of the



1 lease or rents reduced over the remaining fixed term of the  
2 applicable encumbrances.

3       § -7 Board rules. The board shall adopt rules pursuant  
4 to chapter 91, including eligibility requirements for each  
5 disposition and applicant qualification, to effectuate the  
6 purposes of this chapter.

7       § -8 Agricultural enterprise special fund; established.

8 (a) There is established in the state treasury the agricultural  
9 enterprise special fund to be administered by the department,  
10 into which shall be deposited:

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

19       (b) Moneys in the special fund shall be used for planning,  
20 designing, constructing, operating, maintaining, managing,  
21 repairing, demolishing, and removing infrastructure or





1 improvements on agricultural enterprise lands and for  
2 agricultural enterprises under this chapter.

3 § -9 Disposition. (a) Notwithstanding any provision of  
4 this chapter and chapter 171 to the contrary, the department may  
5 dispose of the following by negotiation, drawing of lots,  
6 conversion, or public auction:

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

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

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

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

16 (1) All land and enterprises shall be disposed of in a  
17 manner that supports or promotes agricultural or  
18 aquacultural activities;

19 (2) Each lessee shall derive a major portion of the  
20 lessee's total annual income earned from the lessee's



- 1 activities on the premises; provided that this  
2 restriction shall not apply if:
- 3 (A) Failure to meet the restriction results from  
4 mental or physical disability of the lessee or  
5 the loss of the lessee's spouse; or
  - 6 (B) The premises are fully used to support or promote  
7 the agricultural or aquacultural activities for  
8 which the disposition was granted;
  - 9 (3) The lessee shall comply with all federal and state  
10 laws regarding environmental quality control;
  - 11 (4) The board shall:
    - 12 (A) Determine the specific uses for which the  
13 disposition is intended;
    - 14 (B) Parcel the land into minimum size economic units  
15 sufficient for the intended uses;
    - 16 (C) Make, or require the lessee to make, improvements  
17 that are necessary to achieve the intended uses;
    - 18 (D) Set the upset price or lease rent based upon an  
19 appraised evaluation of the property value,  
20 adjustable to the specified use of the lot;



- 1 (E) Set the term of the lease, which shall not be  
2 less than fifteen years or more than sixty-five  
3 years, including any extension granted for  
4 mortgage lending or guarantee purposes; and
- 5 (F) Establish other terms and conditions that it  
6 deems necessary, including restrictions against  
7 alienation and provisions for withdrawal by the  
8 board; and
- 9 (5) Any transferee, assignee, or sublessee of an  
10 agricultural enterprise lease shall first qualify as  
11 an applicant under this chapter. For the purpose of  
12 this paragraph, any transfer, assignment, sale, or  
13 other disposition of any interest, excluding a  
14 security interest, by any legal entity that holds an  
15 agricultural enterprise lease shall be treated as a  
16 transfer of the agricultural enterprise lease and  
17 shall be subject to the approval of the board,  
18 reasonable terms and conditions consistent with this  
19 chapter, and rules adopted pursuant to this chapter.  
20 No transfer shall be approved by the board if the  
21 disposition of the stock or assets or other interest



1 of the applicant would result in the failure of the  
2 person to qualify for an agricultural enterprise  
3 lease.

4 (c) A violation of any provision in this section shall be  
5 cause for the board to cancel the lease and take possession of  
6 the land, or take other action as the board, in its sole  
7 discretion, deems appropriate; provided that the board shall  
8 provide notice to the lessee of the violation in accordance with  
9 rules adopted pursuant to section -7.

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

14 **§ -10 Authority to plan, design, develop, and manage**  
15 **agricultural enterprise lands and agricultural enterprises.** The  
16 department, or its lessees subject to the department's approval,  
17 may plan, design, develop, and manage agricultural enterprise  
18 lands and agricultural enterprises on:

19 (1) Public lands set aside by executive order pursuant to  
20 section 171-11 for use as agricultural enterprise  
21 lands and agricultural enterprises;



1           (2) Other lands with the approval of the board that may be  
2           subject to a joint venture partnership agreement  
3           pursuant to section       -11; and

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

7           §   -11  **Agricultural enterprise lands and agricultural**  
8  **enterprise development.**  On behalf of the State or in  
9  partnership with a federal agency, a county, or a private party,  
10 the department may develop agricultural enterprise lands and  
11 agricultural enterprises.

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

14           (1)  Holds a revocable permit for agricultural purposes;  
15           (2)  Has formerly held an agricultural lease or a holdover  
16           lease of public land that expired within the last ten  
17           years and has continued to occupy the land; or

18           (3)  Is determined by the department to have a beneficial  
19           impact on agriculture;

20 provided that the department shall notify in writing those  
21 eligible for lease negotiations under this section and shall



1 inform the applicants of the terms, conditions, and restrictions  
2 provided by this section.

3 Any eligible person may apply for a lease by submitting a  
4 written application to the department within thirty days from  
5 the date of receipt of notification; provided that the  
6 department may require documentary proof from any applicant to  
7 determine that the applicant meets eligibility and qualification  
8 requirements for a lease.

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

11 (1) Determined to be sufficiently capable of serving  
12 agricultural purposes;

13 (2) Set aside for agricultural or agricultural-related  
14 uses, by the governor through an executive order, to  
15 the department; and

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

18 (c) In negotiating and executing a lease pursuant to this  
19 section, the board shall:

20 (1) Require the appraisal of the parcel using the Uniform  
21 Standards of Professional Appraisal Practice to



1           determine the rental amount, including percentage  
2           rent;

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

10          (3) Recover from the lessee the costs of expenditures  
11          required by the department to convert the parcel into  
12          leasehold.

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

17          §   -14   **Rights of holders of security interests.** (a)  
18 Prior board action shall be required when an institutional  
19 lender acquires the lessee's interest through a foreclosure  
20 sale, judicial or nonjudicial, or by way of assignment in lieu  
21 of foreclosure, or when the institutional lender sells or causes



1 the sale of the lessee's interest in a lease by way of a  
2 foreclosure sale, judicial or nonjudicial. The institutional  
3 lender shall convey a copy of the sale or assignment as recorded  
4 in the bureau of conveyances.

5 (b) Notwithstanding any other provision of this chapter,  
6 for any lease that is subject to a security interest held by an  
7 institutional lender who has given to the board a copy of the  
8 encumbrance as recorded in the bureau of conveyances:

9 (1) If the lease is canceled for violation of any non-  
10 monetary lease term or condition, or if the lease is  
11 deemed terminated or rejected under bankruptcy laws,  
12 the institutional lender shall be entitled to issuance  
13 of a new lease in its name for a term equal to the  
14 term of the lease remaining immediately prior to the  
15 cancellation, termination, or rejection, with all  
16 terms and conditions being the same as in the  
17 canceled, terminated, or rejected lease, except only  
18 for the liens, claims, and encumbrances, if any, that  
19 were superior to the institutional lender before the  
20 cancellation, termination, or rejection; provided that  
21 a lease that is rejected or deemed rejected under





1 bankruptcy law shall be deemed canceled and terminated  
2 for all purposes under state law;

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

8 (A) The institutional lender shall be liable for the  
9 obligations of the lessee under the lease for the  
10 period of time during which the institutional  
11 lender is the holder of the lessee's interest;  
12 provided that the institutional lender shall not  
13 be liable for any obligations of the lessee  
14 arising after the institutional lender has  
15 assigned the lease; and

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

20 (i) For non-monetary lease violations, the  
21 institutional lender shall first remedy the



1                    lease terms that caused the cancellation,  
2                    termination, or rejection to the  
3                    satisfaction of the board; and  
4                    (ii) The new lease issued to the institutional  
5                    lender shall terminate one hundred twenty  
6                    days from the effective date of issuance, at  
7                    which time the institutional lender shall  
8                    either sell or assign the lease and section  
9                                -9(b)(1) and (2) shall apply to the new  
10                    lease;  
11                    (3) If there is a delinquent loan balance secured by a  
12                    security interest:  
13                                (A) The lease shall not be canceled or terminated,  
14                                except for cancellation by reason of default of  
15                                the lessee;  
16                                (B) No increase over and above the fair market rent,  
17                                based upon the actual use of the land demised and  
18                                subject to the use restrictions imposed by the  
19                                lease and applicable laws, shall be imposed or  
20                                become payable; and



1           (C) No lands shall be withdrawn from the lease,  
2                       except either by eminent domain proceedings  
3                       beyond the control of the board or with prior  
4                       written consent of the institutional lender which  
5                       shall not be unreasonably withheld; and

6           (4) If the lease contains any provision requiring the  
7                       payment of a premium to the lessor on assignment of  
8                       the lease, any premium shall be assessed only after  
9                       all amounts owing by any debt secured by a security  
10                      interest held by an institutional lender have been  
11                      paid in full.

12           (c) Ownership of both the lease and the security interest  
13 by an institutional lender shall not effect or cause a merger  
14 thereof, and both interests shall remain distinct and in full  
15 force and effect unless the institutional lender elects in  
16 writing to merge the lease and security interest with the  
17 consent of the board.

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



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

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

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

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

15           (f) For the purposes of this section:

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



# H.B. NO. 2196

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

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

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

11 "§141-1 Duties in general. The department of agriculture  
12 shall:

13 (1) Gather, compile, and tabulate, from time to time,  
14 information and statistics concerning:

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



- 1 (B) General agriculture: Fruits, fibres, and useful  
2 or ornamental plants and their introduction,  
3 development, care, and manufacture or  
4 exportation, with a view to introducing,  
5 establishing, and fostering new and valuable  
6 plants and industries;
- 7 (2) Encourage and cooperate with the agricultural  
8 extension service and agricultural experiment station  
9 of the University of Hawaii and all private persons  
10 and organizations doing work of an experimental or  
11 educational character coming within the scope of the  
12 subject matter of chapters 141, 142, and 144 to 150A,  
13 and avoid, as far as practicable, duplicating the work  
14 of those persons and organizations;
- 15 (3) Enter into contracts, cooperative agreements, or other  
16 transactions with any person, agency, or organization,  
17 public or private, as may be necessary in the conduct  
18 of the department's business and on [~~such~~] any terms  
19 as the department may deem appropriate; provided that  
20 the department shall not obligate any funds of the  
21 State, except the funds that have been appropriated to



1           the department. Pursuant to cooperative agreement  
2           with any authorized federal agency, employees of the  
3           cooperative agency may be designated to carry out, on  
4           behalf of the State the same as department personnel,  
5           specific duties and responsibilities under chapters  
6           141, 142, 150A, and rules adopted pursuant to those  
7           chapters, for the effective prosecution of pest  
8           control and animal disease control and the regulation  
9           of import into the State and intrastate movement of  
10          regulated articles;

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

16          (5) Provide buildings, grounds, apparatus, and  
17          appurtenances necessary for the examination,  
18          quarantine, inspection, and fumigation provided for by  
19          chapters 141, 142, and 144 to 150A; for the obtaining,  
20          propagation, study, and distribution of beneficial  
21          insects, growths, and antidotes for the eradication of



1 insects, blights, scales, or diseases injurious to  
2 vegetation of value and for the destruction of  
3 injurious vegetation; and for carrying out any other  
4 purposes of chapters 141, 142, and 144 to 150A;

5 (6) Formulate and recommend to the governor and  
6 legislature additional legislation necessary or  
7 desirable for carrying out the purposes of chapters  
8 141, 142, and 144 to 150A;

9 (7) Publish at the end of each year a report of the  
10 expenditures and proceedings of the department and of  
11 the results achieved by the department, together with  
12 other matters germane to chapters 141, 142, and 144 to  
13 150A and that the department may deem proper;

14 (8) Administer a program of agricultural planning and  
15 development, including the formulation and  
16 implementation of general and special plans, including  
17 but not limited to the functional plan for  
18 agriculture; administer the planning, development, and  
19 management of the agricultural park program; plan,  
20 construct, operate, and maintain the state irrigation  
21 water systems; plan, design, construct, operate,





1           manage, maintain, repair, demolish, and remove  
2           infrastructure or improvements on any lands of which  
3           the department has jurisdiction; review, interpret,  
4           and make recommendations with respect to public  
5           policies and actions relating to agricultural land and  
6           water use; assist in research, evaluation,  
7           development, enhancement, and expansion of local  
8           agricultural industries; and serve as liaison with  
9           other public agencies and private organizations for  
10          the above purposes. In the foregoing, the department  
11          shall act to conserve and protect agricultural lands  
12          and irrigation water systems, promote diversified  
13          agriculture, increase agricultural self-sufficiency,  
14          and ensure the availability of agriculturally suitable  
15          lands; and

16          (9) Manage, administer, and exercise control over any  
17          public lands, as defined under section 171-2, that are  
18          designated important agricultural lands pursuant to  
19          section 205-44.5, including but not limited to  
20          establishing priorities for the leasing of these  
21          public lands within the department's jurisdiction."



# H.B. NO. 2190


1 SECTION 3. There is appropriated out of the general  
 2 revenues of the State of Hawaii the sum of \$ or so  
 3 much thereof as may be necessary for fiscal year 2020-2021 to be  
 4 deposited into the agricultural enterprise special fund.

5 SECTION 4. There is appropriated out of the agricultural  
 6 enterprise special fund the sum of \$ or so much  
 7 thereof as may be necessary for fiscal year 2020-2021 for the  
 8 planning, design, construction, operation, management,  
 9 maintenance, repair, demolition, and removal of infrastructure  
 10 on lands under the jurisdiction of the department of agriculture  
 11 to support and promote agriculture.

12 The sum appropriated shall be expended by the department of  
 13 agriculture for the purposes of this Act.

14 SECTION 5. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect on July 1, 2020.  
 17

INTRODUCED BY: S. Q. L.  
D. H. H.  




# H.B. NO. 2190

**Report Title:**

HDOA; Agricultural Enterprises; Agricultural Enterprise Special Fund; Appropriation

**Description:**

Authorizes 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. Establishes the agricultural enterprise program. Establishes the Agricultural Enterprise Special Fund. Makes an appropriation. Effective 7/1/2020.

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

