

JAN 25 2006

S.B. NO. 2954

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. This Act shall be known as the New Directions
2 for Diversified Agriculture Act.

3 SECTION 2. Chapter 163D, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§163D- Irrigation repair and maintenance special

7 fund. (a) There is established in the state treasury the
8 irrigation repair and maintenance special fund which shall be
9 administered by the corporation.

10 (b) Moneys in the irrigation repair and maintenance
11 special fund shall be used to fund repair and maintenance of the
12 following irrigation systems:

13 (1) East Kauai irrigation system;

14 (2) Kekaha ditch;

15 (3) Kokee ditch;

16 (4) Maui Land/Pioneer Mill irrigation system;

17 (5) Waiahole ditch;

18 (6) Lower Hamakua irrigation system;



- 1 (7) Molokai irrigation system;
- 2 (8) Upcountry Maui irrigation system;
- 3 (9) Waimanalo irrigation system;
- 4 (10) Waimea irrigation system;
- 5 (11) East Maui irrigation system;
- 6 (12) Kauai coffee irrigation system;
- 7 (13) West Maui irrigation system;
- 8 (14) Kau irrigation system;
- 9 (15) Honomalino irrigation system; and
- 10 (16) Other privately-owned irrigation systems on former
- 11 sugarcane and pineapple plantation lands that have
- 12 been converted to diversified agriculture.
- 13 (c) The irrigation repair and maintenance special fund
- 14 shall be funded by legislative appropriations, including general
- 15 obligation bond funds and federal funds.
- 16 (d) Landowners may apply for funding assistance from the
- 17 irrigation repair and maintenance special fund; provided that
- 18 the landowner:
- 19 (1) Provides matching funding equal to the amount received
- 20 from the irrigation repair and maintenance special
- 21 fund;



1 (2) Agrees to file a petition for declaratory ruling
2 pursuant to section 205-45 designating all lands
3 within two miles of the water produced by the
4 irrigation system as important agricultural lands as
5 defined under chapter 205 and notifies the corporation
6 and county of the petition and designation for the
7 purpose of inclusion on maps; and

8 (3) Agrees to use all lands served by the water produced
9 by the irrigation system for diversified agriculture
10 production.

11 The corporation shall develop processes, policies,
12 standards, and criteria for selecting the landowners that are to
13 receive funding and the amount of such funding. The corporation
14 shall also develop processes, policies, standards, and criteria
15 for determining the amount of funding provided to irrigation
16 systems in subsection (b) owned by the State.

17 (e) Landowners who apply for and receive funding from the
18 irrigation repair and maintenance special fund, and who provide
19 matching funding under subsection (d)(1), may apply for an
20 income tax credit for their matching funds as specified under
21 section 235-_____.

22 (f) As used in this section:



1 "Diversified agriculture" means agricultural operations
 2 that produce diversified agricultural products, including
 3 flowers, nursery products, vegetables, herbs, melons, seed
 4 crops, macadamia nuts, aquaculture, coffee, milk, cattle, eggs,
 5 hogs, and fruit but excluding sugarcane and pineapple.

6 "Irrigation system" means the agricultural system of
 7 intakes, diversions, wells, ditches, siphons, pipes, reservoirs,
 8 and accessory facilities established to provide water for
 9 agricultural production.

10 "Landowner" means a private entity that:

11 (1) Owns agricultural land, formerly used as a sugarcane
 12 or pineapple plantation, that contains a privately-
 13 owned irrigation system that is necessary for the
 14 sustained production of diversified agriculture on the
 15 land served by the irrigation system; or

16 (2) Owns, or partially owns, an irrigation system listed
 17 in subsection (b) (1) through (15)."

18 SECTION 3. Chapter 235, Hawaii Revised Statutes, is
 19 amended by adding a new section to be appropriately designated
 20 and to read as follows:

21 "§235-_____ Irrigation repair and maintenance special fund
 22 tax credit. (a) There shall be allowed to each qualified



1 taxpayer, pursuant to section 163D- (e) and subject to the
2 taxes imposed by this chapter, an income tax credit which shall
3 be deductible from the qualified taxpayer's net income tax
4 liability, if any, imposed by this chapter for the taxable year
5 in which the credit is properly claimed.

6 The amount of the credit shall be equal to the amount of
7 matching funds provided by the qualified taxpayer in obtaining
8 funding from the irrigation repair and maintenance special fund,
9 as specified in section 163D- (d)(1); provided that:

10 (1) The amount of the credit shall not exceed \$ per
11 year in the aggregate for all qualified taxpayers;

12 (2) The amount of the credit shall not exceed \$ in the
13 aggregate for all qualified taxpayers for all taxable
14 years; and

15 (3) The tax credit shall be available for matching fund
16 costs incurred after December 31, 2005, and before
17 January 1, 2026.

18 In the case of a partnership, S corporation, estate, or
19 trust, the cost upon which the tax credit is computed shall be
20 determined at the entity level. Distribution and share of
21 credit shall be determined pursuant to section 235-110.7(a).



1 If a deduction is taken under Section 179 (with respect to
2 election to expense depreciable business assets) of the Internal
3 Revenue Code, no tax credit shall be allowed for that portion of
4 the construction or renovation cost for which the deduction is
5 taken.

6 The basis of eligible property for depreciation or
7 accelerated cost recovery system purposes for state income taxes
8 shall be reduced by the amount of credit allowable and claimed.
9 In the alternative, the qualified taxpayer shall treat the
10 amount of the credit allowable and claimed as a taxable income
11 item for the taxable year in which it is properly recognized
12 under the method of accounting used to compute taxable income.

13 (b) If the tax credit under this section exceeds the
14 qualified taxpayer's income tax liability, the excess of credit
15 over liability may be used as a credit against the qualified
16 taxpayer's income tax liability until exhausted. All claims for
17 a tax credit under this section shall be filed on or before the
18 end of the twelfth month following the close of the taxable year
19 for which the credit may be claimed. Failure to comply with the
20 foregoing provision shall constitute a waiver of the right to
21 claim the credit.



1 (c) The director of taxation shall prepare any forms that
2 may be necessary to claim a credit under this section. The
3 director may also require the qualified taxpayer to furnish
4 information to ascertain the validity of the claim for credit
5 made under this section and may adopt rules necessary to
6 effectuate the purposes of this section pursuant to chapter 91.

7 (d) To qualify for the income tax credit, the qualified
8 taxpayer shall be in compliance with all applicable federal,
9 state, and county statutes, rules, and regulations.

10 (e) No qualified taxpayer that claims a credit under this
11 section shall claim any other tax credit for the same costs for
12 which a credit is claimed under this section.

13 (f) No later than March 31 of each year following the year
14 in which the cost of matching funds provided by the qualified
15 taxpayer in obtaining funding from the irrigation repair and
16 maintenance special fund were incurred, each qualified taxpayer
17 claiming the tax credit shall submit a written, notarized
18 statement to the director of taxation identifying the matching
19 fund costs incurred in the year being claimed.

20 (g) The department of taxation, with the assistance of the
21 agribusiness development corporation, shall maintain records of
22 the names of qualified taxpayers eligible for the credit and the



1 total amount of eligible costs incurred in each taxable year,
2 beginning after December 31, 2005, by each qualified taxpayer.

3 The department of taxation, with the assistance of the
4 agribusiness development corporation, shall compile all eligible
5 matching fund costs, and upon each determination, shall issue a
6 certificate to the taxpayer pursuant to subsection (h)
7 indicating:

8 (1) The amount of matching fund costs eligible for the tax
9 credit;

10 (2) The amount of the tax credit that the qualified
11 taxpayer may use for the tax year in which the costs
12 were incurred; and

13 (3) The amount of previous tax credits the qualified
14 taxpayer may carry forward.

15 (h) The department of taxation shall certify no more than
16 \$ _____ in credits in the aggregate, including carryforward
17 amounts, for all qualified taxpayers for each taxable year;
18 provided that if the total amount claimed on all statements in
19 the aggregate, including carryforward amounts, filed by March 31
20 for the previous tax year amounts to:

21 (1) \$ _____ or less, the department of taxation shall
22 certify all claims; and



1 (2) More than \$ _____, the department of taxation shall
 2 certify claims for each qualified taxpayer in an
 3 amount proportional to the total amount claimed.

4 The department of taxation shall certify no more than
 5 \$ _____ in credits, including carryforward amounts, in the
 6 aggregate for all qualified taxpayers for all taxable years.

7 (i) As used in this section "qualified taxpayer" means the
 8 same as "landowner" under section 163D- (e)."

9 SECTION 4. Section 26-16, Hawaii Revised Statutes, is
 10 amended by amending subsection (c) to read as follows:

11 "(c) The department shall:

12 (1) Promote the conservation, development, and utilization
 13 of agricultural resources in the State;

14 ~~[(2) Assist the farmers of the State and any others engaged~~
 15 ~~in agriculture by research projects, dissemination of~~
 16 ~~information, crop and livestock reporting service,~~
 17 ~~market news service, and any other means of improving~~
 18 ~~the well-being of those engaged in agriculture and~~
 19 ~~increasing the productivity of the lands;~~

20 ~~+(3)]~~ (2) Administer the programs of the State relating to
 21 animal husbandry, entomology, farm credit,
 22 ~~[development and promotion of agricultural products~~



1 ~~and markets,~~] and the establishment and enforcement of
 2 the rules on the grading and labeling of agricultural
 3 products; and

4 [~~(4)~~] (3) Administer the aquaculture program under section
 5 141-2.5."

6 SECTION 5. Section 141-1, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 "**§141-1 Duties in general.** The department of agriculture
 9 shall:

10 (1) Gather, compile, and tabulate, from time to time,
 11 information and statistics concerning:

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

19 (B) General agriculture: Fruits, fibres, and useful
 20 or ornamental plants and their introduction,
 21 development, care, and manufacture or
 22 exportation, with a view to introducing,



1 establishing, and fostering new and valuable
2 plants and industries;

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

11 (3) Enter into contracts, cooperative agreements, or other
12 transactions with any person, agency, or organization,
13 public or private, as may be necessary in the conduct
14 of the department's business and on such terms as the
15 department may deem appropriate; provided that the
16 department shall not obligate any funds of the State,
17 except the funds that have been appropriated to the
18 department. Pursuant to cooperative agreement with
19 any authorized federal agency, employees of the
20 cooperative agency may be designated to carry out, on
21 behalf of the State the same as department personnel,
22 specific duties and responsibilities under chapters



1 141, 142, 150A, and rules adopted pursuant to those
2 chapters, for the effective prosecution of pest
3 control, and animal disease control, and regulation of
4 import into the State and intrastate movement of
5 regulated articles;

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

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

21 (6) Formulate and recommend to the governor and
22 legislature additional legislation necessary or



1 desirable for carrying out the purposes of chapters
2 141, 142, and 144 to 150A;

3 (7) Publish at the end of each year a report of the
4 expenditures and proceedings of the department and of
5 the results achieved by the department, together with
6 other matters germane to chapters 141, 142, and 144 to
7 150A, and which the department may deem proper;

8 (8) Administer a program of agricultural planning and
9 development, including the formulation and
10 implementation of general and special plans, including
11 but not limited to the functional plan for
12 agriculture; [~~administer the planning, development,~~
13 ~~and management of the agricultural park program; plan,~~
14 ~~construct, operate, and maintain the state irrigation~~
15 ~~water systems;~~] review, interpret, and make
16 recommendations with respect to public policies and
17 actions relating to agricultural land and water use;
18 assist in research, evaluation, development,
19 enhancement, and expansion of local agricultural
20 industries; and serve as liaison with other public
21 agencies and private organizations for the above
22 purposes. In the foregoing, the department of



1 agriculture shall act to conserve and protect
 2 agricultural lands and irrigation water systems,
 3 promote diversified agriculture, increase agricultural
 4 self-sufficiency, and ensure the availability of
 5 agriculturally suitable lands."

6 SECTION 6. Section 163D-3, Hawaii Revised Statutes, is
 7 amended by amending subsection (d) to read as follows:

8 "(d) The board shall appoint an executive director,
 9 subject to confirmation by the senate, who shall serve at the
 10 pleasure of the board and shall be exempt from chapter 76. The
 11 salary of the executive director shall be set by the board."

12 SECTION 7. Section 163D-4, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 "**§163D-4 Powers; generally.** (a) Except as otherwise
 15 limited by this chapter, the corporation may:

- 16 (1) Sue and be sued;
- 17 (2) Have a seal and alter the same at its pleasure;
- 18 (3) Make and alter bylaws for its organization and
 19 internal management;
- 20 (4) Adopt rules under chapter 91 necessary to effectuate
 21 this chapter in connection with its projects,
 22 operations, and properties;



- 1 (5) Make and execute contracts and all other instruments
2 necessary or convenient for the exercise of its powers
3 and functions under this chapter;
- 4 (6) Carry out surveys, research, and investigations into
5 technological, business, financial, consumer trends,
6 and other aspects of agricultural production in the
7 national and international community;
- 8 (7) Acquire or contract to acquire by grant or purchase,
9 or by eminent domain, any real, personal, or mixed
10 property or any interest therein for its immediate or
11 future use for the purposes of this chapter; own,
12 hold, improve, and rehabilitate any real, personal, or
13 mixed property acquired, and sell, assign, exchange,
14 transfer, convey, lease, or otherwise dispose of, or
15 encumber the same;
- 16 (8) By itself, or in partnership with qualified persons,
17 acquire, construct, reconstruct, rehabilitate,
18 improve, alter, or repair any infrastructure or
19 accessory facilities in connection with any project;
20 own, hold, sell, assign, transfer, convey, exchange,
21 lease, or otherwise dispose of, or encumber any
22 project;



1 (9) ~~[In cooperation with the department of agriculture,~~
 2 ~~pursuant]~~ Pursuant to chapter 167, or otherwise
 3 through direct investment or coventure with a
 4 professional investor or enterprise or any other
 5 person, or otherwise, to acquire, construct, operate,
 6 and maintain water facilities for conveying,
 7 distributing, and transmitting water for irrigation
 8 and agricultural uses at rates or charges determined
 9 by the corporation; provided that:

10 (A) This chapter shall not be construed to permit or
 11 allow the ~~[department of agriculture or any]~~
 12 agribusiness development corporation to:

13 (i) Amend or modify rights or entitlements to
 14 water as provided for by ~~[Article]~~ article
 15 XI, section 7, of the Constitution of the
 16 State of Hawaii, or the Hawaiian Homes
 17 Commission Act, 1920, as amended, and
 18 chapter 168;

19 (ii) Diminish or abridge the traditional and
 20 customary rights of ahupua`a tenants who
 21 inhabited the Hawaiian Islands prior to 1778
 22 under sections 1-1 and 7-1; and



- 1 (iii) Impair, abridge, or terminate the legal
2 rights or interests to water and its uses,
3 whether by lease, easement, or other means,
4 which are possessed or held by organizations
5 whose primary purpose is to benefit people
6 of Hawaiian ancestry; and
- 7 (B) All usage of water shall be in accordance with
8 chapter [†]174C[†] and other applicable laws in
9 the State;
- 10 (10) Assist agricultural enterprises by conducting detailed
11 marketing analysis and developing marketing and
12 promotional strategies to strengthen the position of
13 those enterprises and to better exploit local,
14 national, and international markets;
- 15 (11) Carry out specialized programs designed to develop new
16 markets for Hawaii agricultural products;
- 17 (12) Receive, examine, and determine the acceptability of
18 applications of qualified persons for allowances or
19 grants for the development of new crops and
20 agricultural products, the expansion of established
21 agricultural enterprises, and the altering of existing
22 agricultural enterprises;



- 1 (13) Coordinate its activities with any federal or state
2 farm credit programs;
- 3 (14) Grant options to purchase any project or to renew any
4 lease entered into by it in connection with any of its
5 projects, on the terms and conditions it deems
6 advisable;
- 7 (15) Provide advisory, consultative, training, and
8 educational services, technical assistance, and advice
9 to any person, partnership, or corporation, either
10 public or private, [~~in order~~] to carry out the
11 purposes of this chapter, and engage the services of
12 consultants on a contractual basis for rendering
13 professional and technical assistance and advice;
- 14 (16) Procure insurance against any loss in connection with
15 its property and other assets and operations in such
16 amounts and from such insurers as it deems desirable;
- 17 (17) Accept gifts or grants in any form from any public
18 agency or any other source; [~~and~~]
- 19 (18) Assist the farmers of the state and any others engaged
20 in agriculture by research projects, dissemination of
21 information, crop and livestock reporting service,
22 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; and

3 ~~[(18)]~~ (19) Do all things necessary or proper to carry out
4 the purposes of this chapter.

5 (b) The corporation shall ~~[develop,]~~ ;

6 (1) Develop, promote, assist, and market export crops and
7 other crops for local markets~~[-]~~;

8 (2) Administer the programs of the State relating to the
9 development and promotion of agricultural products and
10 markets;

11 (3) Administer the planning, development, and management
12 of the agricultural park program;

13 (4) Manage the non-agricultural park lands transferred to
14 the corporation under chapter 166E; and

15 (5) Plan, construct, operate, and maintain the state
16 irrigation water systems."

17 SECTION 8. Section 163D-5, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The corporation shall prepare the Hawaii agribusiness
20 plan which shall define and establish goals, objectives,
21 policies, and priority guidelines for its agribusiness

1 development strategy. The plan shall include but not be limited

2 to:

3 (1) An inventory of agricultural lands with suitable

4 adequate water resources that are or will become

5 available due to the downsizing of the sugar and

6 pineapple industries that can be used to meet present

7 and future agricultural production needs;

8 (2) An inventory of agricultural infrastructure that will

9 be abandoned by sugar and pineapple industries such as

10 irrigation systems, drainage systems, processing

11 facilities, and other accessory facilities;

12 (3) An inventory of lands designated as agricultural parks

13 pursuant to chapter 166;

14 (4) An inventory of non-agricultural park lands managed

15 under chapter 166E;

16 [~~3~~] (5) An analysis of imported agricultural products and

17 the potential for increasing local production to

18 replace imported products in a manner that complements

19 existing local producers and increases Hawaii's

20 agricultural self-sufficiency;



- 1 [~~4~~] (6) Alternatives in the establishment of sound
2 financial programs to promote the development of
3 diversified agriculture;
- 4 [~~5~~] (7) Feasible strategies for the promotion, marketing,
5 and distribution of Hawaii agricultural products in
6 local, national, and international markets;
- 7 [~~6~~] (8) Programs to promote and facilitate the absorbing of
8 displaced agricultural workers into alternative
9 agricultural enterprises;
- 10 [~~7~~] (9) Strategies to insure the provision of adequate air
11 and surface transportation services and supporting
12 facilities to support the agricultural industry in
13 meeting local, national, and international market
14 needs;
- 15 [~~8~~] (10) Proposals to improve the gathering of data and the
16 timely presentation of information on market demands
17 and trends that can be used to plan future harvests
18 and production; and
- 19 [~~9~~] (11) Strategies for federal and state legislative
20 actions that will promote the development and
21 enhancement of Hawaii's agricultural industries."



1 SECTION 9. Chapter 166E, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending section 166E-1 to read:

4 "[~~f~~]§166E-1[~~f~~] **Legislative findings.** The legislature
5 finds that article XI, section 10, of the State Constitution
6 establishes that "the public lands shall be used for the
7 development of farm and homeownership on as widespread a basis
8 as possible, in accordance with procedures and limitations
9 prescribed by law."

10 Therefore, the legislature finds that certain public lands
11 classified for agricultural use by the department of land and
12 natural resources should be transferred to the [~~department of~~
13 ~~agriculture, with the approval of the board of land and natural~~
14 ~~resources and the board of agriculture,~~] agribusiness
15 development corporation for purposes and in a manner consistent
16 with article XI, section 10, of the State Constitution.

17 The purpose of this chapter is to ensure the long-term
18 productive use of public lands leased or available to be leased
19 by the department of land and natural resources for agricultural
20 purposes by allowing these lands to be transferred to and
21 managed by the [~~department of agriculture.~~] agribusiness
22 development corporation."



1 2. By amending section 166E-2 to read:

2 "[+]§166E-2[+] **Definitions.** For the purposes of this
3 chapter:

4 [~~"Agricultural activities"~~] "Agricultural use" means the
5 care and production of livestock, livestock products, poultry,
6 or poultry products, or apiary, horticultural, or floricultural
7 products, or the planting, cultivating, and harvesting of crops
8 or trees.

9 "Board" means the board of [~~agriculture.~~] directors of the
10 agribusiness development corporation.

11 [~~"Department" means the department of agriculture.~~]

12 "Corporation" means the agribusiness development
13 corporation.

14 "Non-agricultural park lands" means public lands that are
15 [~~not~~]:

16 (1) Not designated as agricultural parks pursuant to
17 chapter 166[~~-~~]; and

18 (2) Classified for agricultural use by the department of
19 land and natural resources."

20 3. By amending section 166E-3 to read:

21 "[+]§166E-3[+] **Transfer** [~~and management~~] **of non-**
22 **agricultural park lands and related facilities to the**



1 ~~[department of agriculture.]~~ corporation; corporation management
2 of lands. (a) ~~[Upon mutual agreement and approval of the board~~
3 ~~and the board of land and natural resources:]~~ By July 1, 2007:

4 (1) ~~[The department may accept the transfer of and manage~~
5 ~~certain qualifying non-agricultural]~~ Certain non-
6 agricultural park lands; and

7 (2) Certain assets, including position counts, related to
8 the management of existing encumbered and unencumbered
9 non-agricultural park lands and related facilities,
10 shall be transferred from the department of land and natural
11 resources to the ~~[department.]~~ corporation under a plan
12 developed and administered by the corporation. The board of
13 land and natural resources shall assist the corporation to plan
14 and timely implement the transfer.

15 (b) The ~~[department]~~ corporation shall administer a
16 program to manage the transferred non-agricultural park lands
17 under rules adopted by the board pursuant to chapter 91. The
18 program and its rules shall be separate and distinct from the
19 agricultural park program and its rules. Non-agricultural park
20 lands are not the same as, and shall not be selected or managed
21 as are lands under agricultural park leases. Notwithstanding
22 any other law to the contrary, the program shall include the



1 following conditions pertaining to encumbered non-agricultural
2 park lands:

3 (1) The lessee or permittee shall perform in full
4 compliance with the existing lease or permit;

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

8 (3) The lessee's or permittee's agricultural operation
9 shall be economically viable as specified by the
10 board; and

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

17 The transfer of non-agricultural park lands managed by the
18 corporation shall be done in a manner to be determined by the
19 board [~~of agriculture~~].

20 (c) For any encumbered or unencumbered non-agricultural
21 park lands transferred to the [~~department~~] corporation that are
22 not being [~~utilized~~] used or required for the public purpose



1 stated, the order setting aside the lands shall be withdrawn and
2 the lands shall be returned to the department of land and
3 natural resources."

4 4. By amending section 166E-4 to read:

5 "[~~f~~]§166E-4[~~f~~] **Conversion of qualified and encumbered**
6 ~~[other agricultural]~~ **non-agricultural park lands.** The
7 ~~[department]~~ corporation shall establish criteria and rules
8 pursuant to chapter 91 and subject to approval by the board to
9 convert qualified and encumbered non-agricultural park lands to
10 ~~[department]~~ corporation leases or other forms of encumbrance."

11 5. By amending section 166E-5 to read:

12 "[~~f~~]§166E-5[~~f~~—~~Extension~~] **Management of qualified and**
13 **encumbered non-agricultural park lands** [~~transferred to and~~
14 ~~managed~~] **by the** ~~[department.]~~ corporation. Notwithstanding
15 chapter 171, the board shall establish criteria and rules to
16 allow the cancellation, renegotiation, and extension of
17 transferred encumbrances by the ~~[department.]~~ corporation.
18 Notwithstanding any law to the contrary, qualified and
19 encumbered non-agricultural park lands transferred to the
20 ~~[department]~~ corporation shall not have the respective length of
21 term of the lease or rents reduced over the remaining fixed term
22 of the applicable encumbrances."



1 6. By amending section 166E-6 to read:

2 "~~+~~\$166E-6~~+~~ **Rules.** The board shall adopt rules
3 pursuant to chapter 91 to effectuate the purposes of this
4 chapter."

5 7. By amending section 166E-7 to read:

6 "~~+~~\$166E-7~~+~~ **Non-agricultural park lands special fund;**
7 **established.** (a) There is established in the state treasury
8 the non-agricultural park lands special fund, into which shall
9 be deposited:

- 10 (1) Legislative appropriations to the fund; and
11 (2) All lease rent, fees, penalties, and any other revenue
12 or funds collected from non-agricultural park lands
13 that are transferred, or in the process of being
14 transferred, to the ~~[department]~~ corporation under
15 this chapter.

16 (b) Moneys in the special fund shall be used to defray the
17 costs incurred in managing, administering, and overseeing non-
18 agricultural park lands that are transferred, or in the process
19 of being transferred, to the ~~[department]~~ corporation under this
20 chapter.

21 (c) The ~~[department]~~ corporation shall administer the non-
22 agricultural park lands special fund."



1 SECTION 10. Section 171-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§171-6 Powers. Except as otherwise provided by law, the
4 board of land and natural resources shall have the powers and
5 functions granted to the heads of departments and the board of
6 land and natural resources under chapter 26.

7 In addition to the foregoing, the board may:

- 8 (1) Adopt a seal;
- 9 (2) Administer oaths;
- 10 (3) Prescribe forms of instruments and documents;
- 11 (4) Adopt rules which, upon compliance with chapter 91,
12 shall have the force and effect of law;
- 13 (5) Set, charge, demand, and collect reasonable fees for
14 the preparation of documents to be issued, for the
15 surveying of public lands, and for the issuing of
16 certified copies of its government records, which
17 fees, when collected, shall be deposited into the
18 state general fund, unless otherwise specified in
19 this chapter;
- 20 (6) Establish additional restrictions, requirements, or
21 conditions, not inconsistent with those prescribed in
22 this chapter, relating to the use of particular land



- 1 being disposed of, the terms of sale, lease, license,
2 or permit, and the qualifications of any person to
3 draw, bid, or negotiate for public land;
- 4 (7) Reduce or waive the lease rental at the beginning of
5 the lease on any lease of public land to be used for
6 ~~[any agricultural or pastoral use, or for]~~ resort,
7 commercial, industrial, or other business use where
8 the land being leased requires substantial
9 improvements to be placed thereon; provided that such
10 reduction or waiver shall not exceed two years for
11 land to be used for any agricultural or pastoral use,
12 or exceed one year for land to be used for resort,
13 commercial, industrial, or other business use;
- 14 (8) Delegate to the chairperson or employees of the
15 department of land and natural resources, subject to
16 the board's control and responsibility, such powers
17 and duties as may be lawful or proper for the
18 performance of the functions vested in the board;
- 19 (9) Utilize arbitration under chapter 658A to settle any
20 controversy arising out of any existing or future
21 lease;



- 1 (10) Set, charge, and collect reasonable fees in an amount
2 sufficient to defray the cost of performing or
3 otherwise providing for the inspection of activities
4 permitted upon the issuance of a land license
5 involving a commercial purpose;
- 6 (11) Appoint masters or hearing officers to conduct public
7 hearings as provided by law and under such conditions
8 as the board by rules shall establish;
- 9 (12) Bring such actions as may be necessary to remove or
10 remedy encroachments upon public lands. Any person
11 causing an encroachment upon public land shall be
12 subject to a fine of not more than \$500 a day for the
13 first offense and shall be liable for administrative
14 costs incurred by the department and for payment of
15 damages. Upon the second offense and thereafter, the
16 violator shall:
 - 17 (A) ~~[be]~~ Be fined not less than \$500 nor more than
18 \$2,000 per day;
 - 19 (B) ~~[if]~~ If required by the board, restore the land
20 to its original condition if altered and assume
21 the costs thereof; and



- 1 (C) [~~assume~~] Assume such costs as may result from
2 adverse effects from such restoration;
- 3 (13) Set, charge, and collect interest and a service charge
4 on delinquent payments due on leases, sales, or other
5 accounts. The rate of interest shall not exceed one
6 per cent a month and the service charge shall not
7 exceed \$50 a month for each delinquent payment;
8 provided that the contract shall state the interest
9 rate and the service charge and be signed by the party
10 to be charged;
- 11 (14) Set, charge, and collect additional rentals for the
12 unauthorized use of public lands by a lessee,
13 licensee, grantee, or permittee who is in violation of
14 any term or condition of a lease, license, easement,
15 or revocable permit, retroactive to the date of the
16 occurrence of the violation. Such amounts shall be
17 considered delinquent payments and shall be subject to
18 interest and service charges as provided in paragraph
19 (13);
- 20 (15) Set, charge, and collect reasonable fines for
21 violation of this chapter or any rule adopted
22 thereunder. Any person violating any of the



1 provisions of this chapter or any rule adopted
2 thereunder, for which violation a penalty is not
3 otherwise provided, shall be fined not more than \$500
4 a day and shall be liable for administrative costs
5 incurred by the department and for payment for
6 damages;

7 (16) Issue revenue bonds, subject to the approval of the
8 legislature. All revenue bonds shall be issued
9 pursuant to part III of chapter 39, except as provided
10 in this chapter. All revenue bonds shall be issued in
11 the name of the department and not in the name of the
12 State. The final maturity date of the revenue bonds
13 may be any date not exceeding thirty years from the
14 date of issuance;

15 (17) Pledge or assign all or any part of the receipts and
16 revenues of the department. The revenue bonds shall
17 be payable from and secured solely by the revenue
18 derived by the department from the industrial park or
19 parks for which the bonds are issued;

20 (18) Reimburse the state general fund for debt service on
21 general obligation bonds or reimbursable general



1 obligation bonds issued by the State for purposes of
2 this chapter; and

3 (19) Do any and all things necessary to carry out its
4 purposes and exercise the powers granted in this
5 chapter."

6 SECTION 11. Chapters 166, 167, and 168, Hawaii Revised
7 Statutes, are amended by substituting the terms:

8 (1) "Agribusiness development corporation" or like term,
9 wherever the term "department of agriculture" or like
10 term appears; and

11 (2) "Board of directors of the agribusiness development
12 corporation" or like term, wherever the term "board of
13 agriculture" or like term appears,

14 as the context requires.

15 SECTION 12. The functions and authority heretofore
16 exercised by the department of agriculture pursuant to chapters
17 166, 166E, 167, and 168; section 26-16(c)(3) relating to the
18 development and promotion of agricultural products and markets;
19 and section 141-1(8) relating to the management of agricultural
20 parks and state irrigation water systems, are transferred to the
21 agribusiness development corporation.



1 All officers and employees whose functions are transferred
2 by this Act shall be transferred with their functions and shall
3 continue to perform their regular duties upon their transfer,
4 subject to the state personnel laws and this Act.

5 No officer or employee of the State having tenure shall
6 suffer any loss of salary, seniority, prior service credit,
7 vacation, sick leave, or other employee benefit or privilege as
8 a consequence of this Act, and such officer or employee may be
9 transferred or appointed to a civil service position without the
10 necessity of examination; provided that the officer or employee
11 possesses the minimum qualifications for the position to which
12 transferred or appointed; and provided that subsequent changes
13 in status may be made pursuant to applicable civil service and
14 compensation laws.

15 An officer or employee of the State who does not have
16 tenure and who may be transferred or appointed to a civil
17 service position as a consequence of this Act shall become a
18 civil service employee without the loss of salary, seniority,
19 prior service credit, vacation, sick leave, or other employee
20 benefits or privileges and without the necessity of examination;
21 provided that such officer or employee possesses the minimum



1 qualifications for the position to which transferred or
2 appointed.

3 If an office or position held by an officer or employee
4 having tenure is abolished, the officer or employee shall not
5 thereby be separated from public employment, but shall remain in
6 the employment of the State with the same pay and classification
7 and shall be transferred to some other office or position for
8 which the officer or employee is eligible under the personnel
9 laws of the State as determined by the head of the department or
10 the governor.

11 SECTION 13. All appropriations, records, equipment,
12 machines, files, supplies, contracts, books, papers, documents,
13 maps, and other personal property heretofore made, used,
14 acquired, or held by the department of agriculture relating to
15 the functions transferred to the agribusiness development
16 corporation shall be transferred with the functions to which
17 they relate.

18 SECTION 14. All rules previously adopted by the board of
19 agriculture pursuant to the provisions of the Hawaii Revised
20 Statutes affected by this Act, shall remain in effect unless
21 repealed by, or superceded by rules adopted by the agribusiness
22 development corporation.



1 SECTION 15. The agribusiness development corporation shall
2 submit to the legislature not later than twenty days prior to
3 the convening of the 2007 regular session:

- 4 (1) A progress report on the transfer of non-agricultural
5 park lands under sections 9 and 12 of this Act; and
- 6 (2) Any proposed legislation relating to the transfer of
7 non-agricultural park lands.

8 SECTION 16. The director of finance is authorized to issue
9 general obligation bonds in the sum of \$30,000,000 or so much
10 thereof as may be necessary, and the same sum or so much thereof
11 as may be necessary is appropriated for fiscal year 2006-2007 to
12 be deposited into the irrigation repair and maintenance special
13 fund and used for the repair and maintenance of the irrigation
14 systems specified under subsection (b) of section 163D- ,
15 Hawaii Revised Statutes; provided that \$50,000,000 in federal
16 matching funds are also deposited into the irrigation repair and
17 maintenance special fund.

18 The sum appropriated shall be expended by the department of
19 budget and finance for the purposes of this Act.

20 SECTION 17. There is appropriated out of the irrigation
21 repair and maintenance special fund the sum of \$80,000,000 or so
22 much thereof as may be necessary for fiscal year 2006-2007 to be



1 expended for the repair and maintenance of the irrigation
2 systems specified under subsection (b) of section 163D- ,
3 Hawaii Revised Statutes.

4 The sum appropriated shall be expended by the agribusiness
5 development corporation for the purposes of this Act.

6 SECTION 18. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$11,886,000 or so
8 much thereof as may be necessary for fiscal year 2006-2007 for
9 repair and maintenance of irrigation systems as follows:

- 10 (1) \$2,336,000 for the East Kauai irrigation system;
- 11 (2) \$500,000 for the Waimanalo irrigation system;
- 12 (3) \$2,500,000 for the Molokai irrigation system;
- 13 (4) \$4,850,000 for the Waimea irrigation system; and
- 14 (5) \$1,700,00 for the Lower Hamakua irrigation system.

15 The sum appropriated shall be expended by the agribusiness
16 development corporation for the purposes of this Act.

17 SECTION 19. There is appropriated out of the general
18 revenues of the State of Hawaii the sum of \$ or so much
19 thereof as may be necessary for fiscal year 2006-2007 for
20 operational, management, and administrative costs incurred by
21 the agribusiness development corporation.



1 The sum appropriated shall be expended by the agribusiness
2 development corporation for the purposes of this Act.

3 SECTION 20. The appropriation made for the capital
4 improvement irrigation repair and maintenance projects
5 authorized in this Act shall not lapse at the end of the fiscal
6 year for which the appropriation is made; provided that all
7 moneys from the appropriation unencumbered as of June 30, 2008,
8 shall lapse as of that date.

9 SECTION 21. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 22. This Act shall take effect upon its approval;
12 provided that:

13 (1) Section 3 shall take effect on July 1, 2006, and apply
14 to taxable years beginning after December 31, 2005;

15 and

16 (2) Sections 16, 17, 18, 19, and 20 shall take effect on
17 July 1, 2006.
18

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Report Title:

Agribusiness Development Corporation

SB. NO. 2954

Description:

Transfers management of agricultural lands and state irrigation systems, and agricultural marketing duties from the Department of Agriculture to the Agribusiness Development Corporation. Requires transfers of non-agricultural park lands to the corporation by July 1, 2007. Establishes an irrigation repair and maintenance special fund. Establishes a tax credit for matching funds provided by landowners who receive funding from the special fund.

