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# A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1           SECTION 1. During the last decade of the twentieth  
2 century, the State was faced with the accelerated closure of a  
3 number of sugar cane and pineapple plantations. It was  
4 estimated that, by the end of the century, seventy-five thousand  
5 acres of cultivated agricultural lands and fifty million gallons  
6 per day of irrigation water would be released from plantation  
7 operations.

8           The legislature viewed this situation with a degree of  
9 optimism, providing an opportunity for dynamic growth in  
10 diversified agriculture and helping to revitalize Hawaii's  
11 agricultural industry. To ensure the success of the conversion  
12 from large plantation operations to smaller multiple diversified  
13 agricultural enterprises, the legislature created the  
14 agribusiness development corporation as a public body corporate  
15 to "administer an aggressive and dynamic agribusiness  
16 development program".

17           In addition to its primary role of taking control of the  
18 infrastructure of former plantations and to service agricultural



1 lands dependent on that infrastructure, in particular  
2 irrigations systems, the agribusiness development corporation  
3 was authorized, or required, to carry out other duties and  
4 responsibilities, including but not limited to:

- 5 (1) Preparing the Hawaii agribusiness plan;
- 6 (2) Conducting detailed market analysis for existing and  
7 new crops;
- 8 (3) Developing marketing and promotional strategies to  
9 better exploit local, national, and international  
10 markets;
- 11 (4) Gathering data and identifying market demands and  
12 trends that can be used to plan future harvests and  
13 production;
- 14 (5) Providing loans, allowances, and grants for the  
15 development, expansion, or altering of new and  
16 existing agricultural enterprises;
- 17 (6) Ensuring the adequacy of surface and air  
18 transportation services and supporting facilities,  
19 allowing local agricultural enterprises to reach  
20 local, national, and international markets;



- 1 (7) Providing consultative, training, and educational  
2 services to persons engaged in agricultural  
3 activities;
- 4 (8) Preparing an inventory of agricultural lands with  
5 adequate water resources that are or will be available  
6 due to the closing of plantation operations;
- 7 (9) Preparing an inventory of agricultural infrastructure  
8 that will be abandoned by the closing plantations; and
- 9 (10) Purchasing securities of or otherwise investing in  
10 qualified enterprises for the purpose of providing  
11 seed money.

12 In spite of all these tasks and responsibilities, along  
13 with the tools and powers to undertake them, the agribusiness  
14 development corporation has limited its activities to its  
15 primary responsibility-to take over the infrastructure of  
16 closing plantation operations, particularly irrigation systems,  
17 repair and restore this infrastructure, and operate the  
18 infrastructure for the benefit of surrounding agricultural lands  
19 dependent on the infrastructure. Many of the other tasks and  
20 responsibilities set forth in chapter 163D, Hawaii Revised  
21 Statutes, have not been undertaken by the agribusiness  
22 development corporation, but have been undertaken by other



1 government agencies and quasi-public and private agricultural  
2 industry stakeholders.

3 From its inception, the agribusiness development  
4 corporation was envisioned as a "dynamic and aggressive" entity  
5 that could respond to the "constantly evolving economies" in the  
6 private sector. This required the ability to immediately react  
7 to changes and events in the private sector; however, any  
8 agricultural projects, development plans, or project facility  
9 programs developed by the agribusiness development corporation  
10 required the approval of the board of agriculture.

11 As a further manifestation of this need to move in a  
12 dynamic and aggressive manner, at its inception, the  
13 agribusiness development corporation was granted an exemption  
14 from the Hawaii procurement code. This allowed it to  
15 immediately respond to needs in the private sector. It also  
16 allowed the corporation to immediately respond to natural  
17 disasters to protect and repair facilities that may incur any  
18 damage that needed immediate attention.

19 The purpose of this Act is to:

20 (1) Refocus and redefine the role and mission of the  
21 agricultural development corporation to its primary  
22 responsibility of taking over, repairing, and managing



1 infrastructure, particularly irrigation systems,  
2 abandoned or left unused and unmaintained by closing  
3 plantation operations;

4 (2) Remove the oversight of the board of agriculture over  
5 the agribusiness development corporation's projects,  
6 plans, and programs; and

7 (3) Restore the agribusiness development corporation's  
8 exemption from the Hawaii procurement code.

9 SECTION 2. Chapter 163D, Hawaii Revised Statutes, is  
10 amended as follows:

11 1. By adding a new section to be appropriately designated  
12 and to read:

13 "§163D- Exemption of agribusiness development  
14 corporation from administrative supervision of boards and  
15 commissions. Notwithstanding any law to the contrary, the  
16 corporation shall be exempt from section 26-35 with the  
17 exception of subsection (a)(2), (3), and (8) and subsection  
18 (b)."

19 2. By amending section 163D-1, Hawaii Revised Statutes, to  
20 read:

21 "[+]§163D-1[+] **Findings and purpose.** The legislature  
22 finds that the downsizing of the sugar and pineapple industries



1 is presenting an unprecedented opportunity for the conversion of  
 2 agriculture into a dynamic growth industry. Within the next  
 3 decade, seventy-five thousand acres of agricultural lands and  
 4 fifty million gallons per day of irrigation water are expected  
 5 to be released by plantations. The downsizing of the sugar and  
 6 pineapple industries will idle a valuable inventory of  
 7 supporting infrastructure, including irrigation systems, roads,  
 8 drainage systems, processing facilities, workshops, and  
 9 warehouses. The challenge to government and business is to  
 10 conserve and convert the arable lands and their associated  
 11 production infrastructure in a timely manner into new productive  
 12 uses [~~that are based upon strategies developed from detailed~~  
 13 ~~marketing analysis and monitoring of local, national, and~~  
 14 ~~international opportunities. Constantly evolving economies~~  
 15 ~~require an aggressive and dynamic leadership for the promotion~~  
 16 ~~and development of agricultural enterprises, and centralized~~  
 17 ~~leadership to coordinate industry development, provide industry-~~  
 18 ~~wide services, provide marketing assistance, and facilitate~~  
 19 ~~investments and coventures in viable enterprises].~~

20 The purpose of this chapter is to create a vehicle and  
 21 process to make optimal use of agricultural assets for the  
 22 economic, environmental, and social benefit of the people of



1 Hawaii. This chapter establishes a public corporation to  
2 administer an aggressive and dynamic agribusiness development  
3 program. The corporation shall coordinate and administer  
4 programs to assist agricultural enterprises to facilitate the  
5 transition of agricultural infrastructure from plantation  
6 operations into other agricultural enterprises[, to carry on the  
7 marketing analysis to direct agricultural industry evolution,  
8 and to provide the leadership for the development, financing,  
9 improvement, or enhancement of agricultural enterprises]."

10 3. By amending section 163D-2, Hawaii Revised Statutes, by  
11 deleting the definitions of "coordinating entrepreneur",  
12 "coventure", "direct investment", "private lender",  
13 "professional investor", "qualified security", and "seed  
14 capital".

15 [~~"Coordinating entrepreneur" means a qualified person~~  
16 ~~capable of organizing, operating, and assuming the risk for~~  
17 ~~enterprises that may include securing land and seed capital,~~  
18 ~~locating farmers, arranging right to till agreements, supplying~~  
19 ~~materials, maintaining equipment and infrastructure, and~~  
20 ~~providing for the processing and marketing of products.~~

21 ~~"Coventure" means an investment by the corporation in~~  
22 ~~qualified securities of an enterprise in which a substantial~~



1 ~~investment is also being made or has been made by a professional~~  
2 ~~investor to provide seed capital to an enterprise. A guarantee~~  
3 ~~by the corporation of qualified securities provided by a~~  
4 ~~professional investor shall be classified as a coventure. An~~  
5 ~~investment made by the corporation, which is a direct~~  
6 ~~investment, may later be classified as a coventure upon an~~  
7 ~~investment by a professional investor.~~

8 ~~"Direct investment" means an investment by the corporation~~  
9 ~~in qualified securities of an enterprise in which no investment~~  
10 ~~is being or has been made by a professional investor to provide~~  
11 ~~seed capital to the enterprise.~~

12 ~~"Private lender" includes banks, savings and loan~~  
13 ~~associations, mortgage companies, and other qualified companies~~  
14 ~~whose business includes the making of loans in the State.~~

15 ~~"Professional investor" means any bank, bank holding~~  
16 ~~company, savings institution, farm credit institution, trust~~  
17 ~~company, insurance company, investment company registered under~~  
18 ~~the federal Investment Company Act of 1940, financial services~~  
19 ~~loan company, pension or profit sharing trust or other financial~~  
20 ~~institution or institutional buyer, licensee under the federal~~  
21 ~~Small Business Investment Act of 1958, or any person,~~  
22 ~~partnership, or other entity of whose resources, a substantial~~





1 ~~amount is dedicated to investing in securities or debt~~  
2 ~~instruments, and whose net worth exceeds \$250,000.~~

3 ~~"Qualified security" means any note, stock, treasury stock~~  
4 ~~bond, debenture, evidence of indebtedness, certificate of~~  
5 ~~interest or participation in any profit sharing agreement,~~  
6 ~~preorganization certificate of subscription, transferable share,~~  
7 ~~investment contract, certificate of deposit for a security,~~  
8 ~~certificate of interest or participation in a patent or patent~~  
9 ~~application, or in royalty or other payments under such a patent~~  
10 ~~or application, or, in general, any interest or instrument~~  
11 ~~commonly known as a "security" or any certificate for, receipt~~  
12 ~~for, or option, warrant, or right to subscribe to or purchase~~  
13 ~~any of the foregoing.~~

14 ~~"Seed capital" means financing that is provided for the~~  
15 ~~development, refinement, and commercialization of a product or~~  
16 ~~process and other working capital needs." ]~~

17 4. By amending section 163D-3, Hawaii Revised Statutes, to  
18 read:

19 **"§163D-3 Agribusiness development corporation; board of**  
20 **directors; established.** (a) There is established the  
21 agribusiness development corporation, which shall be a public  
22 body corporate and politic and an instrumentality and agency of



1 the State. The corporation shall be headed by a board of  
2 directors. The corporation shall be placed within the  
3 department of agriculture for administrative purposes, but the  
4 corporation may later incorporate as a nonprofit corporation if  
5 this proves desirable to further its objectives; provided that  
6 such reorganization as a nonprofit corporation shall not  
7 adversely affect the federal tax status of the interest on any  
8 bonds issued to finance any project or project facility.

9 (b) The board of directors of the corporation shall  
10 consist of eleven voting members, of whom eight shall be  
11 appointed by the governor. The terms of these eight members  
12 shall be four years; provided that, commencing on July 1, 2005,  
13 the governor shall reduce the terms of those initially appointed  
14 so as to provide, as nearly as can be, for the expiration of an  
15 equal number of terms at intervals of one year. The eight  
16 members shall be selected on the basis of their knowledge,  
17 experience, and proven expertise in small and large businesses  
18 within the agricultural industry, agricultural economics,  
19 banking, real estate, finance, promotion, marketing, and  
20 management. Of these eight members, one shall be from the city  
21 and county of Honolulu, one shall be from the county of Hawaii,  
22 one shall be from the county of Maui, one shall be from the



1 county of Kauai, and four shall be appointed at-large. The  
2 director of business, economic development, and tourism; the  
3 chairperson of the board of agriculture; and the chairperson of  
4 the board of land and natural resources, or their designated  
5 representatives, shall be ex-officio, voting members of the  
6 board. All members shall continue in office until their  
7 respective successors have been appointed and qualified. The  
8 board shall annually elect its chairperson from among its  
9 members; provided that the chairperson shall not be an ex-  
10 officio member.

11 (c) The members of the board shall serve without  
12 compensation, but shall be reimbursed for actual expenses  
13 incurred in the performance of their duties.

14 (d) The board shall appoint an executive director, who  
15 shall serve at the pleasure of the board and shall be exempt  
16 from chapter 76. The salary of the executive director shall be  
17 set by the board.

18 [~~(e) The board, through its executive director, may~~  
19 ~~appoint officers, agents, and employees; prescribe their duties~~  
20 ~~and qualifications; and fix their salaries, without regard to~~  
21 ~~chapter 76.] "~~



1           5. By amending section 163D-4, Hawaii Revised Statutes, to  
2 read:

3           "**§163D-4 Powers; generally.** [~~a~~] Except as otherwise  
4 limited by this chapter, the corporation may:

5           (1) Sue and be sued;

6           (2) Have a seal and alter the same at its pleasure;

7           (3) Make and alter bylaws for its organization and  
8           internal management;

9           (4) Adopt rules under chapter 91 necessary to effectuate  
10           this chapter in connection with its projects,  
11           operations, and properties;

12           (5) Make and execute contracts and all other instruments  
13           necessary or convenient for the exercise of its powers  
14           and functions under this chapter;

15           ~~[(6) Carry out surveys, research, and investigations into  
16           technological, business, financial, consumer trends,  
17           and other aspects of agricultural production in the  
18           national and international community;~~

19           ~~(7)]~~ (6) Acquire or contract to acquire by grant or  
20           purchase any real, personal, or mixed property or any  
21           interest therein for its immediate or future use for  
22           the purposes of this chapter; own, hold, improve, and



1 rehabilitate any real, personal, or mixed property  
2 acquired, and sell, assign, exchange, transfer,  
3 convey, lease, or otherwise dispose of, or encumber  
4 the same;

5 [+8)] (7) By itself, or in partnership with qualified  
6 persons, acquire, construct, reconstruct,  
7 rehabilitate, improve, alter, or repair any  
8 infrastructure or accessory facilities in connection  
9 with any project; own, hold, sell, assign, transfer,  
10 convey, exchange, lease, or otherwise dispose of, or  
11 encumber any project;

12 [+9)] (8) In cooperation with the department of  
13 agriculture, pursuant to chapter 167, or otherwise  
14 through direct investment [~~or coventure with a~~  
15 ~~professional investor or enterprise or any other~~  
16 ~~person,~~] or otherwise, to acquire, construct, operate,  
17 and maintain water facilities for conveying,  
18 distributing, and transmitting water for irrigation  
19 and agricultural uses at rates or charges determined  
20 by the corporation; provided that:



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

4 (i) Amend or modify rights or entitlements to  
5 water as provided for by article XI, section  
6 7, of the Constitution of the State of  
7 Hawaii, or the Hawaiian Homes Commission  
8 Act, 1920, as amended, and chapter 168;

9 (ii) Diminish or abridge the traditional and  
10 customary rights of ahupua`a tenants who  
11 inhabited the Hawaiian ~~[Islands]~~ islands  
12 prior to 1778 under sections 1-1 and 7-1;  
13 and

14 (iii) Impair, abridge, or terminate the legal  
15 rights or interests to water and its uses,  
16 whether by lease, easement, or other means,  
17 ~~[which]~~ that are possessed or held by  
18 organizations whose primary purpose is to  
19 benefit people of Hawaiian ancestry; and

20 (B) All usage of water shall be in accordance with  
21 chapter ~~[+]~~174C~~[+]~~ and other applicable laws in  
22 the State;



- 1     ~~[(10) Assist agricultural enterprises by conducting detailed~~  
2     ~~marketing analysis and developing marketing and~~  
3     ~~promotional strategies to strengthen the position of~~  
4     ~~those enterprises and to better exploit local,~~  
5     ~~national, and international markets;~~
- 6     ~~(11) Carry out specialized programs designed to develop new~~  
7     ~~markets for Hawaii agricultural products;~~
- 8     ~~(12) Receive, examine, and determine the acceptability of~~  
9     ~~applications of qualified persons for allowances or~~  
10    ~~grants for the development of new crops and~~  
11    ~~agricultural products, the expansion of established~~  
12    ~~agricultural enterprises, and the altering of existing~~  
13    ~~agricultural enterprises;~~
- 14    ~~(13)]~~ (9) Coordinate its activities with any federal or  
15    state farm credit programs;
- 16    ~~[(14)]~~ (10) Grant options to purchase any project or to  
17    renew any lease entered into by it in connection with  
18    any of its projects, on the terms and conditions it  
19    deems advisable;
- 20    ~~[(15)]~~ (11) Provide advisory, consultative, ~~[training, and~~  
21    ~~educational services,]~~ and technical assistance~~[,]~~ and  
22    advice to any person, partnership, or corporation,



1 either public or private, [~~in order~~] to carry out the  
2 purposes of this chapter, and engage the services of  
3 consultants on a contractual basis for rendering  
4 professional and technical assistance and advice;

5 [~~(16)~~] (12) Procure insurance against any loss in connection  
6 with its property and other assets and operations in  
7 [~~such~~] amounts and from [~~such~~] insurers as it deems  
8 desirable;

9 [~~(17)~~] (13) Accept gifts or grants in any form from any  
10 public agency or any other source; [~~and~~]

11 (14) Through its executive director, represent the  
12 corporation in communications with the governor and  
13 the legislature;

14 (15) Through its executive director, provide for the  
15 appointment of officers, agents, and employees,  
16 subject to the approval of the board, prescribing  
17 their duties and qualifications, and fixing their  
18 salaries, without regard to chapters 76 and 78, so  
19 long as funds have been appropriated by the  
20 legislature and allotted as provided by law;

21 (16) Through its executive director purchase supplies,  
22 equipment, or furniture;





1       (17) Through its executive director, allocate the space or  
2       spaces that are to be occupied by the corporations and  
3       its appropriate staff; and

4       (18) Do all things necessary or proper to carry out the  
5       purposes of this chapter.

6       ~~[(b) The corporation shall develop, promote, assist, and~~  
7       ~~market export crops and other crops for local markets.] "~~

8       6. By amending subsection (b) of section 163D-6, Hawaii  
9       Revised Statutes, to read:

10       "(b) If the corporation acquires the assets of a private  
11       or other corporation, then, notwithstanding any law to the  
12       contrary:

13       (1) Neither the corporation nor any subsidiary corporation  
14       vested with the assets shall be subject to chapter 91  
15       with respect to the assets;

16       (2) Employees retained to operate the assets shall not be  
17       subject to chapter 76;

18       (3) Assets constituting real property interest shall not  
19       be subject to chapter 171;

20       (4) No investment, loan, or use of funds by the  
21       corporation or a subsidiary corporation vested with



1 the assets shall be subject to chapter 42F ~~[e]~~,  
2 103~~[+]~~, or 103D; and

3 (5) Neither the corporation nor a subsidiary corporation  
4 vested with the assets shall constitute a public  
5 utility or be subject to the jurisdiction of the  
6 public utilities commission under chapter 269."

7 7. By amending section 163D-7, Hawaii Revised Statutes, to  
8 read:

9 "[~~f~~] **§163D-7** [~~f~~] **Agricultural projects; agricultural**  
10 **development plans.** (a) The corporation may develop and  
11 implement agricultural projects where large tracts of  
12 agricultural land have been or will be taken out of productive  
13 agriculture [~~or where, through detailed analysis, opportunities~~  
14 ~~exist to exploit potential local, national, and international~~  
15 ~~markets]~~.

16 (b) The corporation may initiate and coordinate the  
17 preparation of [~~business and~~] agricultural development plans for  
18 its projects. The plans shall include a proposal for the  
19 organization of the enterprise [~~, a marketing information and~~  
20 ~~strategy, the impact on existing agricultural operations~~  
21 ~~throughout the State,]~~ and a recommendation for the  
22 construction, reconstruction, rehabilitation, improvement,



1 alteration, or repair of any infrastructure or accessory  
2 facilities in connection with any project.

3 (c) The corporation may enter into cooperative agreements  
4 with [~~coordinating entrepreneurs~~] private persons or public  
5 agencies when the powers, services, and capabilities of the  
6 persons or agencies are deemed necessary and appropriate for the  
7 development and implementation of the [~~business and~~]  
8 agricultural development plans.

9 (d) The agricultural planning activities of the  
10 corporation shall be coordinated with the county planning  
11 departments and the county land use plans, policies, and  
12 ordinances.

13 (e) The corporation may amend the [~~business and~~]  
14 agricultural development plans as may be necessary.

15 (f) Any undertaking by the corporation pursuant to this  
16 chapter that directly affects private lands shall be with the  
17 express written consent of the landowner or landowners directly  
18 affected."

19 8. By amending subsection (g) of section 163D-8, Hawaii  
20 Revised Statutes, to read:

21 "(g) All sums collected under this section shall be  
22 deposited in the fund [~~established by section 163D-17~~], except



1 that all moneys collected on account of assessments and  
2 interests thereon for any specific project facilities financed  
3 by the issuance of bonds, shall be set apart in a separate  
4 special fund and applied solely to the payment of:

- 5 (1) The principal and interest on [~~these~~] the bonds;
- 6 (2) The cost of administering, operating, and maintaining  
7 the program;
- 8 (3) The establishment of reserves; and
- 9 (4) Other purposes as may be authorized in the proceedings  
10 providing for the issuance of the bonds.

11 If any surplus remains in any special fund after the  
12 payment of the bonds chargeable against that special fund, the  
13 surplus shall be credited to and become a part of the fund.  
14 Notwithstanding any other law to the contrary, moneys in the  
15 fund may be used to make up any deficiencies in the special  
16 fund."

17 9. By amending subsection (b) of section 163D-15.5, Hawaii  
18 Revised Statutes, to read:

19 "(b) No expenditure, use, or transfer of funds from the  
20 Waiahole water system revolving fund by the corporation shall be  
21 subject to chapter 42F [~~or~~], 103[-], or 103D."



1           10. By amending section 163D-17, Hawaii Revised Statutes,  
2 to read:

3           "**§163D-17 Hawaii agricultural development revolving fund;**  
4 **established; use of corporation funds.** (a) There is  
5 established the Hawaii agricultural development revolving fund,  
6 to which shall be credited any state appropriations to the fund  
7 or other moneys made available to the fund, to be expended as  
8 directed by the corporation.

9           (b) The corporation shall hold the fund in an account or  
10 accounts separate from other funds. The corporation shall  
11 invest and reinvest the fund and the income thereof [~~to:~~

12           ~~(1) Purchase qualified securities issued by enterprises~~  
13           ~~for the purpose of raising seed capital; provided that~~  
14           ~~the investment shall comply with the requirements of~~  
15           ~~this chapter;~~

16           ~~(2) Make grants, loans, and provide other monetary forms~~  
17           ~~of assistance necessary to carry out the purposes of~~  
18           ~~this chapter; and~~

19           ~~(3) Purchase securities as may be lawful investments for~~  
20           ~~fiduciaries in the State].~~

21           All appropriations, grants, contractual reimbursements, and  
22 other funds [~~not designated for this purpose~~] may be used to pay



1 for the proper general expenses and to carry out the purposes of  
2 the corporation.

3 ~~[(c) The corporation shall purchase qualified securities~~  
4 ~~issued by an enterprise only after:~~

5 ~~(1) Receiving:~~

6 ~~(A) An application from the enterprise containing a~~  
7 ~~business plan, which is consistent with the~~  
8 ~~business and agricultural development plan,~~  
9 ~~including a description of the enterprise and its~~  
10 ~~management, product, and market;~~

11 ~~(B) A statement of the amount, timing, and projected~~  
12 ~~use of the capital required;~~

13 ~~(C) A statement of the potential economic impact of~~  
14 ~~the enterprise, including the number, location,~~  
15 ~~and types of jobs expected to be created; and~~

16 ~~(D) Any other information as the corporation shall~~  
17 ~~require;~~

18 ~~(2) Determining, based upon the application submitted,~~  
19 ~~that:~~

20 ~~(A) The proceeds of the investment will be used only~~  
21 ~~to cover the seed capital needs of the~~  
22 ~~enterprise, except as authorized in this section;~~



- 1           ~~(B) The enterprise has a reasonable chance of~~  
2           ~~success;~~
- 3           ~~(C) The enterprise has the reasonable potential to~~  
4           ~~create employment within the State and offers~~  
5           ~~employment opportunities to residents;~~
- 6           ~~(D) The coordinating entrepreneur and other founders~~  
7           ~~of the enterprise have already made or are~~  
8           ~~prepared to make a substantial financial and time~~  
9           ~~commitment to the enterprise;~~
- 10          ~~(E) The securities to be purchased are qualified~~  
11          ~~securities;~~
- 12          ~~(F) There is reasonable possibility that the~~  
13          ~~corporation will recoup at least its initial~~  
14          ~~investment; and~~
- 15          ~~(G) Binding commitments have been made to the~~  
16          ~~corporation by the enterprise for adequate~~  
17          ~~reporting of financial data to the corporation,~~  
18          ~~which shall include a requirement for an annual~~  
19          ~~or other periodic audit of the books of the~~  
20          ~~enterprise, and for control by the corporation~~  
21          ~~that it considers prudent over the management of~~  
22          ~~the enterprise, in order to protect the~~



1 ~~investment of the corporation, including~~  
2 ~~membership on the board of directors of the~~  
3 ~~enterprise, ownership of voting stock, input in~~  
4 ~~management decisions, and the right of access to~~  
5 ~~the financial and other records of the~~  
6 ~~enterprise; and~~

7 ~~(3) Entering into a binding agreement with the enterprise~~  
8 ~~concerning the manner of payback by the enterprise of~~  
9 ~~the funds advanced, granted, loaned, or received from~~  
10 ~~the corporation. The manner of payback may include~~  
11 ~~the payment of dividends, returns from the public sale~~  
12 ~~of corporate securities or products, royalties, and~~  
13 ~~other methods of payback acceptable to the~~  
14 ~~corporation. In determining the manner of payback the~~  
15 ~~corporation shall establish a rate of return or rate~~  
16 ~~of interest to be paid on any investment, loan, or~~  
17 ~~grant of corporation funds under this section.~~

18 ~~(d) If the corporation makes a direct investment, it shall~~  
19 ~~also find that a reasonable effort has been made to find a~~  
20 ~~professional investor to make an investment in the enterprise as~~  
21 ~~a coventure, and that the effort was unsuccessful. The~~  
22 ~~findings, when made by the corporation, shall be conclusive.~~





1       ~~(c) The corporation shall not make investments in~~  
2 ~~qualified securities issued by an enterprise in excess of the~~  
3 ~~following limits:~~

4       ~~(1) Not more than \$500,000 shall be invested in the~~  
5 ~~securities of any one enterprise, except that more~~  
6 ~~than a total of \$500,000 may be invested in the~~  
7 ~~securities of any one enterprise, if the corporation~~  
8 ~~finds, after its initial investment, that additional~~  
9 ~~investments in that enterprise are required to protect~~  
10 ~~the initial investment of the corporation, and the~~  
11 ~~other findings set forth in subsections (d) and (e)~~  
12 ~~are made as to the additional investment;~~

13       ~~(2) The corporation shall not own securities representing~~  
14 ~~more than forty-nine per cent of the voting stock of~~  
15 ~~any one enterprise at the time of purchase by the~~  
16 ~~corporation after giving effect to the conversion of~~  
17 ~~all outstanding convertible securities of the~~  
18 ~~enterprise, except that in the event of severe~~  
19 ~~financial difficulty of the enterprise, threatening~~  
20 ~~the investment of the corporation in the enterprise, a~~  
21 ~~greater percentage of those securities may be owned by~~  
22 ~~the corporation; and~~



1       ~~(3) Not more than fifty per cent of the assets of the~~  
2           ~~corporation shall be invested in direct investments at~~  
3           ~~any time.~~

4       ~~(f)]~~ (c) No ~~[investment, loan, grant, or]~~ use of corporate  
5 funds for the purposes of this chapter shall be subject to  
6 chapter 42F~~[.]~~ or 103D."

7       11. By amending section 163D-19, Hawaii Revised Statutes,  
8 to read:

9       " ~~[.]~~ **§163D-19** ~~[.]~~ **Annual report.** The corporation shall  
10 submit to the governor and directly to the legislature, no later  
11 than twenty days prior to the convening of each regular session,  
12 a complete and detailed report of its plans and activities."

13       12. By repealing section 163D-5.

14       ~~[" **§163D-5** **Hawaii agribusiness plan.** (a) The~~  
15 ~~corporation shall prepare the Hawaii agribusiness plan which~~  
16 ~~shall define and establish goals, objectives, policies, and~~  
17 ~~priority guidelines for its agribusiness development strategy.~~  
18 ~~The plan shall include but not be limited to:~~

19       ~~(1) An inventory of agricultural lands with suitable~~  
20           ~~adequate water resources that are or will become~~  
21           ~~available due to the downsizing of the sugar and~~



- 1           ~~pineapple industries that can be used to meet present~~  
2           ~~and future agricultural production needs;~~
- 3           ~~(2) An inventory of agricultural infrastructure that will~~  
4           ~~be abandoned by sugar and pineapple industries such as~~  
5           ~~irrigation systems, drainage systems, processing~~  
6           ~~facilities, and other accessory facilities;~~
- 7           ~~(3) An analysis of imported agricultural products and the~~  
8           ~~potential for increasing local production to replace~~  
9           ~~imported products in a manner that complements~~  
10           ~~existing local producers and increases Hawaii's~~  
11           ~~agricultural self-sufficiency;~~
- 12           ~~(4) Alternatives in the establishment of sound financial~~  
13           ~~programs to promote the development of diversified~~  
14           ~~agriculture;~~
- 15           ~~(5) Feasible strategies for the promotion, marketing, and~~  
16           ~~distribution of Hawaii agricultural products in local,~~  
17           ~~national, and international markets;~~
- 18           ~~(6) Programs to promote and facilitate the absorbing of~~  
19           ~~displaced agricultural workers into alternative~~  
20           ~~agricultural enterprises;~~
- 21           ~~(7) Strategies to insure the provision of adequate air and~~  
22           ~~surface transportation services and supporting~~



1 ~~facilities to support the agricultural industry in~~  
2 ~~meeting local, national, and international market~~  
3 ~~needs;~~

4 ~~(8) Proposals to improve the gathering of data and the~~  
5 ~~timely presentation of information on market demands~~  
6 ~~and trends that can be used to plan future harvests~~  
7 ~~and production; and~~

8 ~~(9) Strategies for federal and state legislative actions~~  
9 ~~that will promote the development and enhancement of~~  
10 ~~Hawaii's agricultural industries.~~

11 ~~(b) The corporation shall revise the Hawaii agribusiness~~  
12 ~~plan from time to time and shall incorporate the plan in its~~  
13 ~~annual report to the governor and the legislature as provided in~~  
14 ~~section 163D-19." ]~~

15 13. By repealing section 163D-8.5.

16 ~~["**~~§163D-8.5 Approval of projects, plans, and programs.~~**]~~  
17 ~~All agricultural projects, agricultural development plans, and~~  
18 ~~project facility programs developed by the corporation must be~~  
19 ~~approved by the board of agriculture before implementation." ]~~

20 SECTION 3. The governor shall review the amendments made  
21 to chapter 163D, Hawaii Revised Statutes, by section 2 of this



1 Act and report to the legislature no later than twenty days  
2 prior to the convening of the regular session of 2008 on:

3 (1) The staffing, funding, and resources that are  
4 necessary for the agribusiness development corporation  
5 to carry out its mandate under chapter 163D, Hawaii  
6 Revised Statutes, as amended by this Act;

7 (2) How much of that staffing, funding, and resources can  
8 reasonably be provided through transfers within the  
9 executive branch of government; and

10 (3) Whether there are any public lands that should be  
11 withdrawn from or set aside to the agribusiness  
12 development corporation to allow it to carry out its  
13 mandate under chapter 163D, Hawaii Revised Statutes.

14 SECTION 4. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$ or so much  
16 thereof as may be necessary for fiscal year 2007-2008 and the  
17 same sum or so much thereof as may be necessary for fiscal year  
18 2008-2009 for two FTE positions for the agribusiness development  
19 corporation as follows:

20 (1) One special assistant; and

21 (2) One engineer.



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

3           SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5           SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Agribusiness Development Corporation

**Description:**

Amends agribusiness development corporation law to refocus and direct the role of the corporation to one of taking control of infrastructure from closing large crop plantation operations and converting the infrastructure for use by multiple diversified agricultural enterprises. Removes department of agriculture's oversight of the corporation. Restores procurement code exemption to agribusiness development corporation. (HB1114 HD1)

