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# A BILL FOR AN ACT

RELATING TO LAND ACQUISITION.

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

1           SECTION 1. The legislature finds that it is in the public  
2 interest to acquire private lands currently owned by the George  
3 Galbraith Estate (Estate) for the preservation of agricultural  
4 lands in central Oahu, and protection of the health, welfare,  
5 and safety of the people of the State of Hawaii.

6           The Estate was established pursuant to the will of George  
7 Galbraith, which was admitted to probate on March 25, 1905. Due  
8 to considerable ambiguity on the intention and validity of the  
9 will, the will was litigated extensively. In *Fitchie v. Brown*,  
10 18 Haw. 52 (November 1, 1906), the Hawaii Supreme Court held  
11 that the will created a trust to accumulate unapplied income;  
12 that the lives in being listed in the will were the named  
13 annuitants; and that the trust estate would be distributed  
14 twenty-one years after the death of the last surviving annuitant  
15 listed in the will. The Supreme Court of the United States  
16 upheld this interpretation in 211 U.S. 321 (1908).

17           Subsequent litigation established that the heirs of life  
18 annuities took their shares of the annuities by right of



1 representation; that annuities could be sold in fee; and that  
2 the final holders of the annuities, at the time of distribution,  
3 would take a per capita share of the estate. *Hawaiian Trust v.*  
4 *Galbraith*, 22 Haw. 78 (1914); *Hawaiian Trust Co. v. Galbraith*,  
5 24 Haw. 174 (1919).

6 The corpus of the Estate currently includes 20 individual  
7 and contiguous parcels having a combined area of approximately  
8 2,100 acres situated north of Wahiawa--a significant assemblage  
9 of some of the most fertile agricultural land in the state.  
10 These lands were historically leased to pineapple growers on a  
11 long-term basis and have not been available for sale for more  
12 than 100 years.

13 On April 26, 1986, Arthur Cathcart, the last named  
14 annuitant in the George Galbraith will, died. Pursuant to the  
15 terms of the will, the Estate was to terminate on April 26,  
16 2007. However, because of the numerous interpretations of the  
17 will and the passage of time, a large number of minuscule life  
18 annuities were created, precipitating considerable difficulty in  
19 determining who some of the annuitants are and how the corpus  
20 would be distributed among the beneficiaries. Accordingly,  
21 although the termination date of the Estate has passed, the  
22 trustees have not yet sold the landholdings while these and



1 other legal issues are being addressed. Furthermore, chapter  
2 517, Hawaii Revised Statutes, authorizes the trustees of an  
3 estate or trust, with the approval of the court, to sell the  
4 real property of the estate or trust beyond the expiration date  
5 of the estate or trust.

6 The legislature further finds that the State of Hawaii is  
7 committed to preserving its limited natural resources. Article  
8 XI, section 3 of the Hawaii Constitution requires the State to  
9 conserve and protect agricultural lands, promote diversified  
10 agriculture, increase agricultural self-sufficiency, and assure  
11 the availability of agriculturally suitable lands. Therefore,  
12 the legislature further finds that the acquisition of the  
13 Galbraith landholdings in central Oahu furthers this essential  
14 public policy.

15 The legislature also finds that the body of water in  
16 Wahiawa, commonly referred to as Lake Wilson, is on real  
17 property owned by the Estate and an affiliate of Castle and  
18 Cooke Hawaii (Castle and Cooke). While the Estate intends to  
19 sell that land upon the termination of the Estate, Lake Wilson  
20 remains an agricultural irrigation asset of the other half-owner  
21 of the land under the Lake--Castle and Cooke.



1           According to the American Society of Civil Engineers, the  
2 earthen Wahiawa dam on Kaukonahua stream that creates Lake  
3 Wilson is classified "high hazard," not because of structural or  
4 functional deficiencies, but because of its precarious location.  
5 A failure of the Wahiawa dam could cause massive loss of life,  
6 injuries, and property damage to downstream areas throughout the  
7 communities of Waialua and Haleiwa.

8           While the State has had discussions with the Estate and  
9 Castle and Cooke on the possible "gifting" of the landholdings  
10 under Lake Wilson, the imminent termination of the Estate and  
11 the fiduciary responsibility of the trustees to obtain the  
12 maximum return for beneficiaries have greatly compounded the  
13 complexity of the negotiations between state officials and the  
14 landowners.

15           Lastly, the valuation of the Estate's landholdings has been  
16 a matter of conjecture for many years, especially due to the  
17 enormous potential it may hold should the land ever be  
18 reclassified from agricultural to a higher use. As such, there  
19 is a strong possibility that the placement of these lands on the  
20 open market may create a frenzy of speculative buying that might  
21 result in the break up of these large contiguous tracks of land.



1 For tax purposes, the city and county of Honolulu has  
 2 determined that as of October 1, 2006, the total property  
 3 assessed value of the parcels situated in central Oahu was  
 4 approximately \$100,000,000:

5	<u>Parcel</u>	<u>Assessed Value</u>
6	TMK 6-5-002:010	\$10,569,100
7	TMK 6-5-002:025	\$6,154,700
8	TMK 6-5-002:026	\$3,589,000
9	TMK 7-1-001:001	\$1,898,900
10	TMK 7-1-001:002	\$17,492,900
11	TMK 7-1-001:003	\$7,879,900
12	TMK 7-1-001:005	\$12,969,000
13	TMK 7-1-001:006	\$3,421,500
14	TMK 7-1-001:007	\$813,500
15	TMK 7-1-001:008	\$17,613,100
16	TMK 7-1-001:012	\$1,736,400
17	TMK 7-1-001:013	\$900
18	TMK 7-1-001:017	\$100
19	TMK 7-1-001:020	\$11,300
20	TMK 7-1-001:021	\$7,200
21	TMK 7-1-001:022	\$156,800
22	TMK 7-1-001:023	\$1,041,200



1	TMK 7-1-001:024	\$200
2	TMK 7-1-001:025	\$998,600
3	TMK 7-1-001:026	\$11,356,900
4	TMK 7-1-001:027	\$464,100
5	TMK 7-1-001:028	\$507,400
6	TMK 7-1-001:029	\$335,500
7	TMK 7-1-001:032	<u>\$878,900</u>
8	TOTAL	\$99,897,100

9 The purpose of this Act is to appropriate funds for the  
10 acquisition of lands owned by the Galbraith Estate in central  
11 Oahu. It is the intent of the legislature that this Act not be  
12 construed to preclude the State and the Estate from entering  
13 into a land exchange or any other agreement that would reduce  
14 the expenditure of funds authorized by this Act.

15 SECTION 2. (a) The governor or governor's designee is  
16 authorized to negotiate with the George Galbraith Estate, or its  
17 successor in interest, to acquire property owned by the Estate,  
18 or its successor in interest, located in central Oahu, including  
19 property designated by tax map keys 6-5-002:010, 6-5-002:025, 6-  
20 5-002:026, 7-1-001:001, 7-1-001:002, 7-1-001:003, 7-1-001:005,  
21 7-1-001:006, 7-1-001:007, 7-1-001:008, 7-1-001:012, 7-1-001:013,  
22 7-1-001:017, 7-1-001:020, 7-1-001:021, 7-1-001:022, 7-1-001:023,



1 7-1-001:024, 7-1-001:025, 7-1-001:026, 7-1-001:027, 7-1-001:028,  
2 7-1-001:029, and 7-1-001:032.

3 (b) The financing of the acquisition may be by one or more  
4 of the following means:

5 (1) Appropriations made by the legislature from the  
6 general fund or any special funds;

7 (2) General obligation bonds authorized by the  
8 legislature;

9 (3) Exchange of public lands, to the extent authorized by  
10 law;

11 (4) Federal funds;

12 (5) Private funds, financing, or donations; or

13 (6) Any other means of financing the governor or the  
14 governor's designee may negotiate.

15 SECTION 3. If the governor or the governor's designee  
16 finds that it is not feasible for the State to acquire sole  
17 interest of the property identified in section 2 of this Act,  
18 the governor or the governor's designee shall seek out and, if  
19 possible, enter into a cooperative agreement or agreements with  
20 private or other interested public entities for the purpose of  
21 cooperatively acquiring the property.



1 SECTION 4. The governor or governor's designee shall  
2 submit a report to the legislature no later than twenty days  
3 prior to the convening of the regular session of 2009 regarding  
4 its efforts to acquire the property identified in section 2 of  
5 this Act and its recommendations for financing the purchase of  
6 the property.

7 SECTION 5. If an agreement to acquire the property  
8 identified in section 2 of this Act is not reached within a  
9 reasonable time as determined by the governor or the governor's  
10 designee, the governor or the governor's designee shall exercise  
11 the State's power of eminent domain to acquire the property.  
12 For purposes of this Act, condemnation of the property shall not  
13 be subject to legislative disapproval.

14 SECTION 6. 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 2008-2009 to acquire  
17 the lands currently owned by the George Galbraith Estate in  
18 central Oahu, including property designated by tax map keys 6-5-  
19 002:010, 6-5-002:025, 6-5-002:026, 7-1-001:001, 7-1-001:002, 7-  
20 1-001:003, 7-1-001:005, 7-1-001:006, 7-1-001:007, 7-1-001:008,  
21 7-1-001:012, 7-1-001:013, 7-1-001:017, 7-1-001:020, 7-1-001:021,  
22 7-1-001:022, 7-1-001:023, 7-1-001:024, 7-1-001:025, 7-1-001:026,





1 7-1-001:027, 7-1-001:028, 7-1-001:029, and 7-1-001:032, or to  
2 commence the condemnation process of those lands.

3 The sum appropriated shall be expended by the department of  
4 land and natural resources for the purposes of this Act.

5 SECTION 7. There is appropriated out of the special  
6 fund the sum of \$ or so much thereof as may be necessary  
7 for fiscal year 2008-2009 to acquire the lands currently owned  
8 by the George Galbraith Estate in central Oahu, including  
9 property designated by tax map keys 6-5-002:010, 6-5-002:025, 6-  
10 5-002:026, 7-1-001:001, 7-1-001:002, 7-1-001:003, 7-1-001:005,  
11 7-1-001:006, 7-1-001:007, 7-1-001:008, 7-1-001:012, 7-1-001:013,  
12 7-1-001:017, 7-1-001:020, 7-1-001:021, 7-1-001:022, 7-1-001:023,  
13 7-1-001:024, 7-1-001:025, 7-1-001:026, 7-1-001:027, 7-1-001:028,  
14 7-1-001:029, and 7-1-001:032, or to commence the condemnation  
15 process of those lands.

16 The sum appropriated shall be expended by the department of  
17 land and natural resources for the purposes of this Act.

18 SECTION 8. The director of finance is authorized to issue  
19 general obligation bonds in the sum of \$ or so much  
20 thereof as may be necessary and the same sum or so much thereof  
21 as may be necessary is appropriated for fiscal year 2008-2009 to  
22 acquire the lands currently owned by the George Galbraith Estate



1 in central Oahu, including property designated by tax map keys  
2 6-5-002:010, 6-5-002:025, 6-5-002:026, 7-1-001:001, 7-1-001:002,  
3 7-1-001:003, 7-1-001:005, 7-1-001:006, 7-1-001:007, 7-1-001:008,  
4 7-1-001:012, 7-1-001:013, 7-1-001:017, 7-1-001:020, 7-1-001:021,  
5 7-1-001:022, 7-1-001:023, 7-1-001:024, 7-1-001:025, 7-1-001:026,  
6 7-1-001:027, 7-1-001:028, 7-1-001:029, and 7-1-001:032.

7 SECTION 9. The appropriation made for the land acquisition  
8 authorized by this Act shall not lapse at the end of the fiscal  
9 biennium for which the appropriation is made; provided that all  
10 moneys from the appropriation unencumbered as of June 30, 2010,  
11 shall lapse as of that date.

12 SECTION 10. This Act shall take effect on July 1, 2050.



**Report Title:**

Galbraith Estate; Appropriation

**Description:**

Authorizes the Governor to acquire lands owned by the Galbraith Estate in central Oahu. Appropriates general and special funds and authorizes the issuance of general obligation bonds for the acquisition of the lands. (SB2421 HD1)

