

JAN 18 2008

S.B. NO. 2422

---

---

# A BILL FOR AN ACT

RELATING TO AGRICULTURE.

**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

SB HMS 2008-1054



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 twenty  
7 individual and contiguous parcels having a combined area of  
8 approximately two thousand one hundred acres situated north of  
9 Wahiawa -- a significant assemblage of some of the most fertile  
10 agricultural land in the state. These lands were historically  
11 leased to pineapple growers on a long-term basis and have not  
12 been available for sale for more than one hundred 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 addressed. Furthermore, chapter 517,  
2 Hawaii Revised Statutes, authorizes the trustees of an estate or  
3 trust, with the approval of the court, to sell the real property  
4 of the estate or trust beyond the expiration date of the estate  
5 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 constitution of the State of Hawaii  
9 requires the State to "conserve and protect agricultural lands,  
10 promote diversified agriculture, increase agricultural self-  
11 sufficiency and assure the availability of agriculturally  
12 suitable lands." As such, the legislature further finds that  
13 the acquisition of the Galbraith landholdings in central Oahu  
14 furthers this essential 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 Lake Wilson--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 because of 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 facilitate the acquisition of  
10 lands owned by the Galbraith Estate in central Oahu. In  
11 addition, this Act also allows the agribusiness development  
12 corporation to:

- 13 (1) Contract with financial institutions as lease income
- 14 collection agents; and
- 15 (2) Purchase, accept, and maintain permanent conservation
- 16 easements.

17 PART I

18 SECTION 2. The purpose of this part is to:

- 19 (1) Promote fiscal accountability with regard to
- 20 agricultural land lease agreements between the State
- 21 and lessees by allowing the agribusiness development



1 corporation to contract with financial institutions as  
2 lease income collection agents; and

3 (2) Allow the agribusiness development corporation to  
4 purchase, accept, and maintain permanent conservation  
5 easements.

6 SECTION 3. Section 163D-7, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "[+]§163D-7[+] **Agricultural projects; agricultural**  
9 **development plans.** (a) The corporation may develop and  
10 implement agricultural projects where large tracts of  
11 agricultural land have been or will be taken out of productive  
12 agriculture or where, through detailed analysis, opportunities  
13 exist to exploit potential local, national, and international  
14 markets.

15 (b) The corporation may initiate and coordinate the  
16 preparation of business and agricultural development plans for  
17 its projects. The plans shall include a proposal for the  
18 organization of the enterprise, marketing information and  
19 strategy, the impact on existing agricultural operations  
20 throughout the [~~State~~] state, and a recommendation for the  
21 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 or public agencies when the  
5 powers, services, and capabilities of the persons or agencies  
6 are deemed necessary and appropriate for the development and  
7 implementation of the business and agricultural development  
8 plans.

9 (d) The corporation may purchase, accept, and maintain  
10 permanent conservation easements in accordance with the Natural  
11 Resources Conservation Service farm and ranch lands protection  
12 program.

13 (e) Notwithstanding any provision of this chapter to the  
14 contrary, when leasing corporation-controlled agricultural land,  
15 the corporation may contract with a financial institution  
16 chartered under chapter 412 or a federal financial institution,  
17 as defined under section 412:1-109, that is transacting business  
18 in this State to provide lease management services. For the  
19 purposes of this subsection, "lease management services"  
20 includes the collection of lease rent and any other moneys owed  
21 to the corporation related to the lease of agricultural land  
22 under the corporation's control.







1 use of ~~[such]~~ the land[-]; provided that for lands in central  
2 Oahu acquired under Act \_\_\_\_\_, Session Laws of Hawaii 2008, the  
3 agricultural leases shall be for no more than fifty-five years.

4 (b) To further ensure the preservation of agriculture in  
5 the leeward and central districts of Oahu, the agribusiness  
6 development corporation shall monitor the agricultural leases of  
7 lands ~~[utilizing]~~ using the water from the Waiahole water  
8 system. In the event of any proposed amendment or revocation of  
9 any such lease, the corporation shall do all things within its  
10 powers under ~~[+]this chapter[+]~~ to protect and defend the  
11 interests of the agricultural leaseholders to ensure the  
12 continuation of agricultural use for those lands."

13 PART III

14 SECTION 6. The purpose of this part is to comply with  
15 article XI, sections 3 and 10 of the state constitution,  
16 relating to the protection of agricultural lands and the  
17 promotion of farm ownership and diversified agriculture, by  
18 establishing a process to ensure that certain lands in central  
19 Oahu:

- 20 (1) Remain available for agricultural use;  
21 (2) Are properly managed so as to ensure continued  
22 economic viability while used for agriculture; and



1           (3) Are managed in a manner that is sensitive to and  
2                         consistent with the needs of farmers in the central  
3                         Oahu area.

4           The legislature finds that this Act is in accordance with  
5 article XI, sections 3 and 10 of the state constitution, is in  
6 the public interest, and will preserve agricultural activities  
7 in the area and a lifestyle that benefits the central Oahu  
8 community and the community at large.

9           SECTION 7. Section 163D-9, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11           "(a) The corporation, with the approval of the governor,  
12 may issue, from time to time, revenue bonds in amounts not  
13 exceeding the total amount of bonds authorized to be issued by  
14 the legislature for the purpose of constructing, acquiring,  
15 remodeling, furnishing, and equipping any project facility,  
16 including the acquisition of the site thereof[-], or acquiring  
17 agricultural lands through purchase in order to sustain and  
18 preserve viable agricultural enterprises within a contiguous  
19 geographic area."

20           SECTION 8. (a) The agribusiness development corporation  
21 is authorized to purchase the agricultural lands located in  
22 central Oahu and owned by the George Galbraith trust.



1 (b) The agribusiness development corporation may purchase  
2 the lands with a combination of revenues derived through the  
3 issuance of revenue bonds pursuant to section 163D-9, Hawaii  
4 Revised Statutes, and moneys appropriated under section 9  
5 through 12 of this Act.

6 (c) The agribusiness development corporation shall submit  
7 to the legislature a progress report on its actions to obtain  
8 the central Oahu agricultural lands no later than twenty days  
9 prior to the convening of the 2008 regular session.

10 SECTION 9. There is appropriated out of the general  
11 revenues of the State of Hawaii the sum of \$ or so  
12 much thereof as may be necessary for fiscal year 2008-2009 to  
13 acquire the lands currently owned by the Galbraith Estate in  
14 central Oahu and designated by tax map keys 6-5-002:010, 6-5-  
15 002:025, 6-5-002:026, 7-1-001:001, 7-1-001:002, 7-1-001:003, 7-  
16 1-001:005, 7-1-001:006, 7-1-001:007, 7-1-001:008, 7-1-001:012,  
17 7-1-001:013, 7-1-001:017, 7-1-001:020, 7-1-001:021, 7-1-001:022,  
18 7-1-001:023, 7-1-001:024, 7-1-001:025, 7-1-001:026, 7-1-001:027,  
19 7-1-001:028, 7-1-001:029, and 7-1-001:032.

20 The sum appropriated shall be expended by the agribusiness  
21 development corporation for the purposes of this part.



1 SECTION 10. Pursuant to part III, chapter 39, Hawaii  
2 Revised Statutes, the agribusiness development corporation, with  
3 the approval of the governor, is authorized to issue revenue  
4 bonds in a total amount not to exceed \$ , in one or  
5 more series, and the same sum is appropriated for fiscal year  
6 2008-2009 for the purpose of purchasing the lands currently  
7 owned by the Galbraith Estate in central Oahu and designated by  
8 tax map keys 6-5-002:010, 6-5-002:025, 6-5-002:026, 7-1-001:001,  
9 7-1-001:002, 7-1-001:003, 7-1-001:005, 7-1-001:006, 7-1-001:007,  
10 7-1-001:008, 7-1-001:012, 7-1-001:013, 7-1-001:017, 7-1-001:020,  
11 7-1-001:021, 7-1-001:022, 7-1-001:023, 7-1-001:024, 7-1-001:025,  
12 7-1-001:026, 7-1-001:027, 7-1-001:028, 7-1-001:029, and 7-1-  
13 001:032.

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

16 SECTION 11. The revenue bonds issued under this Act shall  
17 be issued pursuant to part III, chapter 39, and section 163D-9,  
18 Hawaii Revised Statutes, relating to the power of the  
19 agribusiness development corporation to issue revenue bonds to  
20 acquire agricultural lands to sustain and promote agricultural  
21 enterprises.



1 SECTION 12. The authorization to issue revenue bonds under  
2 this Act shall lapse on June 30, 2012.

3 PART IV

4 SECTION 13. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 14. This Act shall take effect on July 1, 2008.

7

INTRODUCED BY:  \_\_\_\_\_



**Report Title:**

Galbraith Estate; Agricultural Lands; Agribusiness

**Description:**

Authorizes issuance of revenue bonds to purchase land in central Oahu from the Galbraith Estate; appropriates funds to purchase the lands; enables the Agribusiness Development Corporation to contract with lending institutions to provide lease management services.

