

JAN 18 2008

S.B. NO. 2423

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

13 Subsequent litigation established that the heirs of life
14 annuities took their shares of the annuities by right of
15 representation; that annuities could be sold in fee; and that
16 the final holders of the annuities, at the time of distribution,
17 would take a per capita share of the estate. Hawaiian Trust v.



1 Galbraith, 22 Haw. 78 (1914); Hawaiian Trust Co. v. Galbraith,
2 24 Haw. 174 (1919).

3 The corpus of the Estate currently includes twenty
4 individual and contiguous parcels having a combined area of
5 approximately two thousand one hundred acres situated north of
6 Wahiawa--a significant assemblage of some of the most fertile
7 agricultural land in the state. These lands were historically
8 leased to pineapple growers on a long-term basis and have not
9 been available for sale for more than one hundred years.

10 On April 26, 1986, Arthur Cathcart, the last named
11 annuitant in the George Galbraith will, died. Pursuant to the
12 terms of the will, the Estate was to terminate on April 26,
13 2007. However, because of the numerous interpretations of the
14 will and the passage of time, a large number of minuscule life
15 annuities were created precipitating considerable difficulty in
16 determining who some of the annuitants are, and how the corpus
17 would be distributed among the beneficiaries. Accordingly,
18 although the termination date of the Estate has passed, the
19 trustees have not yet sold the landholdings while these and
20 other legal issues are addressed. Furthermore, chapter 517,
21 Hawaii Revised Statutes, authorizes the trustees of an estate or
22 trust, with the approval of the court, to sell the real property



1 of the estate or trust beyond the expiration date of the estate
2 or trust.

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

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

19 According to the American Society of Civil Engineers, the
20 earthen Wahiawa dam on Kaukonahua stream that creates Lake
21 Wilson is classified "high hazard", not because of structural or
22 functional deficiencies, but because of its precarious location.



1 A failure of the Wahiawa dam could cause massive loss of life,
2 injuries, and property damage to downstream areas throughout the
3 communities of Waialua and Haleiwa.

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

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

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

22 Parcel Assessed Value



1	TMK 6-5-002:010	\$10,569,100
2	TMK 6-5-002:025	\$6,154,700
3	TMK 6-5-002:026	\$3,589,000
4	TMK 7-1-001:001	\$1,898,900
5	TMK 7-1-001:002	\$17,492,900
6	TMK 7-1-001:003	\$7,879,900
7	TMK 7-1-001:005	\$12,969,000
8	TMK 7-1-001:006	\$3,421,500
9	TMK 7-1-001:007	\$813,500
10	TMK 7-1-001:008	\$17,613,100
11	TMK 7-1-001:012	\$1,736,400
12	TMK 7-1-001:013	\$900
13	TMK 7-1-001:017	\$100
14	TMK 7-1-001:020	\$11,300
15	TMK 7-1-001:021	\$7,200
16	TMK 7-1-001:022	\$156,800
17	TMK 7-1-001:023	\$1,041,200
18	TMK 7-1-001:024	\$200
19	TMK 7-1-001:025	\$998,600
20	TMK 7-1-001:026	\$11,356,900
21	TMK 7-1-001:027	\$464,100
22	TMK 7-1-001:028	\$507,400



1	TMK 7-1-001:029	\$335,500
2	TMK 7-1-001:032	<u>\$878,900</u>
3	TOTAL	\$99,897,100

4 The legislature therefore declares that it is in the public
5 interest to acquire private lands currently owned by the George
6 Galbraith Estate for the preservation of agricultural lands in
7 central Oahu, and protection of the health, welfare, and safety
8 of the people of the State of Hawaii by exercise of eminent
9 domain. The legislature further declares that it is necessary
10 to provide for public financing of the acquisition of these
11 lands by condemnation through the expenditure of general funds,
12 revenue bonds, or any other public and private funds at the
13 disposal of the State.

14 SECTION 2. The department of land and natural resources or
15 any appropriate entity of the State shall immediately initiate
16 negotiations with the trustees of the George Galbraith Estate,
17 or its successor in interest, to acquire the property in central
18 Oahu designated by tax map keys 6-5-002:010, 6-5-002:025, 6-5-
19 002:026, 7-1-001:001, 7-1-001:002, 7-1-001:003, 7-1-001:005, 7-
20 1-001:006, 7-1-001:007, 7-1-001:008, 7-1-001:012, 7-1-001:013,
21 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 The department of land and natural resources or the
4 appropriate entity of the State shall submit a report to the
5 legislature no later than twenty days prior to the convening of
6 the regular session of 2009 regarding its efforts to acquire the
7 aforementioned lands and its recommendations for financing the
8 purchase of the property.

9 SECTION 3. If an agreement to acquire the property is not
10 reached within a reasonable time as determined by the department
11 of land and natural resources or any other appropriate entity of
12 the State, the state agency shall exercise its power of eminent
13 domain to acquire the property. For purposes of this Act,
14 condemnation of the property shall not be subject to legislative
15 disapproval.

16 SECTION 4. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$ or so much
18 thereof as may be necessary for fiscal year 2008-2009 for the
19 purpose of negotiating with the trustees of the George Galbraith
20 Estate to commence the condemnation process.

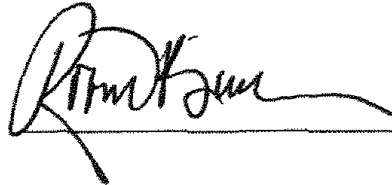


1 The sum appropriated shall be expended by the department of
2 land and natural resources for the purposes of this Act.

3 SECTION 5. This Act shall take effect on July 1, 2008.

4

INTRODUCED BY:



Report Title:

Galbraith Estate Acquisition

Description:

Directs the Department of Land and Natural Resources or any appropriate entity of the State to acquire lands situated in central Oahu owned by the Galbraith Estate by negotiation or condemnation.

