

JAN 23 2008

A BILL FOR AN ACT

RELATING TO THE MOLOKAI WATER IRRIGATION SYSTEM.

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

1 SECTION 1. Chapter 167, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . MOLOKAI IRRIGATION SYSTEM

5 §167-A Molokai irrigation system water users board;
6 establishment; meetings. (a) There is established a Molokai
7 irrigation system water users board, to be appointed by the
8 governor under section 26-34. The Molokai board shall consist
9 of six members, as follows:

- 10 (1) A homestead farmer user on Molokai;
- 11 (2) A non-homestead farmer user on Molokai;
- 12 (3) The nominee of the Molokai Farm Bureau;
- 13 (4) The nominee of Hikiola Cooperative, Inc.;
- 14 (5) The nominee Molokai-Lanai soil and water conservation
15 district; and
- 16 (6) The nominee of the department of Hawaiian home lands.



1 The members of the Molokai board shall serve without
2 compensation, but shall be entitled to reimbursement for
3 necessary expenses while attending meetings and while in the
4 discharge of their duties. For administrative purposes, and
5 pursuant to section 26-35, the Molokai board shall be placed
6 within the department of agriculture.

7 (b) The Molokai board shall meet with the department of
8 agriculture at least six times each year. The meetings shall be
9 held on Molokai, whenever possible.

10 **§167-B Molokai board powers and duties.** (a) The Molokai
11 board shall have the following powers and duties:

12 (1) To acquire by eminent domain, water and water sources
13 either above or underground, watershed, reservoir
14 sites, rights-of-way over lands and property for
15 paths, trails, roads, and landing sites, ditches,
16 tunnels, flumes, reservoirs, and pipelines necessary
17 or proper for the construction and maintenance of
18 water facilities for conveying, distributing, and
19 transmitting water for irrigation and domestic use and
20 for such other purposes as may properly fall within
21 the scope of its activities in creating, managing,
22 controlling, operating, and maintaining irrigation



1 water facilities, any of which purposes shall be held
2 to be for a public use and purpose;

3 (2) To make and execute contracts and other instruments
4 necessary or convenient to the exercise of the powers
5 of the Molokai board, including, without prejudice to
6 the generality of the foregoing, contracts and other
7 instruments for the purchase or sale of water and for
8 the purchase or lease of water facilities for
9 irrigation of the area, including but not limited to
10 the production of agricultural products and the land
11 on which the facilities are situated, and for securing
12 to the owners and occupiers of land already using
13 water in a project a priority right to so much water
14 from those of their sources and facilities which are
15 taken over for the project as is required for the
16 purposes or needs of the land, whether agricultural or
17 nonagricultural in nature, as such purposes or needs
18 exist at the inception of the project or are then
19 contemplated in the immediate future;

20 (3) To make and from time to time amend and repeal bylaws
21 and rules, not inconsistent with this chapter, which
22 upon compliance with chapter 91 shall have the force



- 1 and effect of law, to carry into effect the powers and
2 purposes of the Molokai board;
- 3 (4) To make surveys for the purposes of determining the
4 engineering and economic feasibility of each project;
- 5 (5) To conduct or have prepared comprehensive studies of
6 the crops, livestock, and poultry which may be
7 profitably grown or produced within each project and
8 the probable market for such crops, livestock, and
9 poultry;
- 10 (6) To conduct feasibility studies of the economic
11 potential of the area;
- 12 (7) To determine the probable costs and value of providing
13 water for irrigation in any proposed project;
- 14 (8) To investigate and make surveys of water resources,
15 including the possibility and feasibility of inducing
16 rain by artificial or other means;
- 17 (9) To define and redefine the boundaries of projects and
18 to consolidate or separate projects, existing or
19 proposed pursuant to this chapter, provided that in
20 the event the redefinition of the boundaries or the
21 consolidation or separation previously effected
22 increased the total amount required to be derived from



1 acreage assessments upon lands within the existing
2 project or projects by more than five per cent or will
3 require an increase in the tolls charged for water
4 supplied to the lands or will reduce the amount of
5 water normally available for distribution to the
6 lands, then the redefinition, consolidation, or
7 separation may be accomplished only after notice has
8 been published and a public hearing held as required
9 for the formation of a project upon the initiative of
10 the Molokai board. At the hearing, right to protest
11 and the procedure relative to protest shall be the
12 same as specified in section 167-17 concerning the
13 formation of projects, and the proposed redefinition
14 of boundaries, consolidation, or separation of
15 projects shall not be accomplished if protests, such
16 as would be sufficient to prevent the action if it
17 were the formation of a project, are filed by owners
18 and lessees of land within the existing projects or
19 projects affected thereby;

20 (10) The Molokai board is empowered, upon petition of land
21 occupiers as provided by section 167-13, or upon
22 petition of the Hawaiian homes commission or upon its



- 1 own initiative, to prepare detailed plans for the
2 acquisition or construction of facilities for
3 irrigation or for economic development, which in its
4 opinion are economically feasible, to prepare
5 estimates of the probable cost of each, and to prepare
6 estimates of the water tolls and acreage assessments
7 required for the cost of operation and the
8 amortization of the investment of each project, so
9 that the project shall be self-supporting;
- 10 (11) Establish and certify the total amount of acreage
11 assessments to be levied annually and collect the
12 assessments within each project;
- 13 (12) Set and from time to time revise tolls that it shall
14 charge for the water provided by its facilities,
15 subject to the rate policies established hereunder;
- 16 (13) Establish priorities between the several lands
17 included in a project according to the use to which
18 the lands are put or other reasonable basis for
19 classification;
- 20 (14) Govern the furnishing of water in the event of a
21 shortage of supply and to correlate water tolls with
22 these priorities;



- 1 (15) Charge and collect water tolls, fees, and other
2 charges established in connection herewith;
- 3 (16) Sell, exchange, transfer, assign, or pledge any
4 property, real or personal, or any interest therein,
5 to any person, firm, corporation, or government,
6 except as prohibited by the laws of the State;
- 7 (17) Hold, clear, and improve property;
- 8 (18) Borrow money for any of the purposes hereunder;
- 9 (19) Authorize the investment of any funds held in
10 reserves, or any funds not required for immediate
11 disbursement, in property or securities in which
12 savings banks may legally invest funds subject to the
13 Molokai board's control;
- 14 (20) Insure or provide for the insurance of the property or
15 operations of the Molokai board against such risks as
16 the Molokai board may deem advisable;
- 17 (21) Include in any construction contract executed in
18 connection with a project, stipulations requiring that
19 the contractor and any subcontractors comply with
20 requirements as to minimum wages and maximum hours of
21 labor, and comply with any conditions that the federal



1 government may have attached to its financial aid of
2 the project;

3 (22) Set, charge, and collect interest and a service charge
4 on delinquent payments due on water tolls, acreage
5 assessments, or other related accounts; provided that
6 the rate of interest shall not exceed one per cent per
7 month and the service charge shall not exceed amount
8 to be determined by the Molokai board for each
9 delinquent payment;

10 (23) Accept a security interest in real or personal
11 property for a debt restructured under a payment plan
12 for delinquent water tolls, acreage assessments, or
13 other related irrigation project accounts subject to
14 the rate of interest set forth in paragraph (22) and

15 (24) Foreclose upon or otherwise enforce the security
16 interest accepted under paragraph (23) by any method
17 provided for by law and to hold title to, maintain,
18 use, manage, operate, sell, lease, or otherwise
19 dispose of that personal or real property to recover
20 the debt secured.

21 (b) The Molokai board shall also have the power to enter
22 into any repayment or other contracts with the United States for



1 the construction, operation, and maintenance of any projects as
2 may be required or provided for by the federal reclamation laws,
3 or acts amendatory thereof or supplementary thereto, or other
4 federal laws, and further to borrow money or accept grants or
5 assistance from the federal government, or any department,
6 bureau, or agency thereof with respect to the engineering,
7 construction, operation, and financing of any project hereunder.
8 The Molokai board shall make every effort to obtain all federal
9 aid possible for the purposes of this chapter.

10 (c) In making surveys, studies, and investigations, in
11 planning and designing, and in constructing projects and
12 facilities for irrigation, the Molokai board shall also have
13 power to include therein surveys, studies, and investigations
14 of, plans and designs for, and construction of facilities for
15 flood control and the utilization of water for the production of
16 hydroelectric power, where the same may be practicable in
17 conjunction with the formation and operation of an irrigation
18 project or projects.

19 **§167-C Native Hawaiian water rights.** (a) Provisions of
20 this chapter shall not be construed to amend or modify rights or
21 entitlements to water as provided for by the Hawaiian Homes



1 Commission Act, 1920, as amended, and by chapters 168 and 174C,
2 relating to the Molokai irrigation system.

3 (b) No provision of this chapter shall diminish or
4 extinguish trust revenues derived from existing water licenses
5 unless compensation is made.

6 (c) Traditional and customary rights of ahupua'a tenants
7 who are descendants of native Hawaiians who inhabited the
8 Hawaiian Islands prior to 1778 shall not be abridged or denied
9 by this chapter. Such traditional and customary rights shall
10 include, but not be limited to, the cultivation or propagation
11 of taro on one's own kuleana and the gathering of hihiwai, opae,
12 o'opu, limu, thatch, ti leaf, aho cord, and medicinal plants for
13 subsistence, cultural, and religious purposes.

14 (d) The appurtenant water rights of kuleana and taro
15 lands, along with those traditional and customary rights assured
16 in this section, shall not be diminished or extinguished by a
17 failure to apply for or to receive a permit under this chapter."

18 SECTION 2. Section 167-2, Hawaii Revised Statutes, is
19 amended by adding a new definition to be appropriately inserted
20 and to read as follows:

21 "Molokai board" means the Molokai irrigation system water
22 users board."



1 SECTION 3. Section 167-23, Hawaii Revised Statutes, is
2 repealed.

3 ~~[" [§167-23] Molokai irrigation system water users advisory~~
4 ~~board, establishment, meetings. (a) There is established a~~
5 ~~Molokai irrigation system water users advisory board, to be~~
6 ~~appointed by the governor under section 26-34. The advisory~~
7 ~~board shall consist of six members, as follows:~~

8 ~~(1) A homestead farmer user on Molokai;~~

9 ~~(2) A nonhomestead farmer user on Molokai;~~

10 ~~(3) The designee (by name rather than office) of the~~
11 ~~Molokai Farm Bureau;~~

12 ~~(4) The designee (by name rather than office) of Hikiola~~
13 ~~Cooperative, Inc.;~~

14 ~~(5) The designee (by name rather than office) of the~~
15 ~~Molokai Lanai soil and water conservation district;~~

16 ~~and~~

17 ~~(6) The designee (by name rather than office) of the~~
18 ~~department of Hawaiian home lands.~~

19 ~~The members of the advisory board shall serve without~~
20 ~~compensation, but shall be entitled to reimbursement for~~
21 ~~necessary expenses while attending meetings and while in the~~
22 ~~discharge of their duties. For administrative purposes, and~~



1 ~~pursuant to section 26-35, the advisory board shall be placed~~
2 ~~within the department of agriculture.~~

3 ~~(b) The advisory board shall meet with the department of~~
4 ~~agriculture at least six times each year. The meetings shall be~~
5 ~~held on Molokai, whenever possible.~~

6 ~~The advisory board's duties and responsibilities shall be~~
7 ~~to advise the department on matters of concern to the users of~~
8 ~~the system, to provide support for improvements to the~~
9 ~~irrigation facilities, to participate in the long range planning~~
10 ~~of the system, and to act as liaison between the users and the~~
11 ~~department."]~~

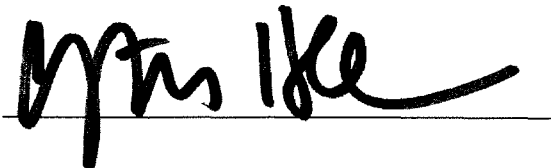
12 SECTION 4. When codifying the new part added to chapter
13 167, Hawaii Revised Statutes, the revisor of statutes shall
14 substitute appropriate section numbers for letters.

15 SECTION 5. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

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

18

INTRODUCED BY:





Report Title:

Molokai Irrigation System Water Users Board

Description:

Creates the Molokai irrigation system water users board.

Repeals Molokai irrigation system water users advisory board.

