

JAN 20 2012

A BILL FOR AN ACT

RELATING TO THE AGRIBUSINESS DEVELOPMENT CORPORATION.

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

1 SECTION 1. Act 264, Session Laws of Hawaii 1994,
2 established the agribusiness development corporation to "make
3 optimal use of agricultural assets for the economic,
4 environmental, and social benefit of the people of Hawaii". The
5 duties of the corporation include the coordination and
6 administration of programs that "provide the leadership for the
7 development, financing, improvement, or enhancement of
8 agricultural enterprises". Despite the agribusiness development
9 corporation's duties, the department of agriculture currently
10 coordinates and administers the advertising and marketing of
11 fruits, vegetables, and coffee under chapter 148, Hawaii Revised
12 Statutes.

13 The legislature finds that the agribusiness development
14 corporation is the appropriate public agency to coordinate and
15 administer the advertising and marketing programs for
16 agricultural products. The legislature further finds that
17 transferring the coordination and administration of the
18 advertising and marketing of fruits, vegetables, and coffee



1 under chapter 148, Hawaii Revised Statutes, from the department
2 of agriculture to the agribusiness development corporation will
3 result in greater governmental efficiencies.

4 The purpose of this Act is to:

- 5 (1) Transfer responsibility for the advertising and
6 marketing of fresh fruits, fresh vegetables, and
7 coffee from the department of agriculture to the
8 agribusiness development corporation; and
- 9 (2) Authorize the agribusiness development corporation to
10 develop standards for and certify all agricultural
11 products made, grown, or manufactured in the State of
12 Hawaii.

13 SECTION 2. Chapter 163D, Hawaii Revised Statutes, is
14 amended by adding a new part to be appropriately designated and
15 to read as follows:

16 **"PART III. ADVERTISING AND MARKETING OF FRESH**
17 **FRUITS, FRESH VEGETABLES, AND COFFEE**

18 §163D- **Definitions.** As used in this part:

19 "Chairperson" means chairperson of the board of directors
20 of the agribusiness development corporation or the chairperson's
21 authorized agent;



1 "Corporation" means the agribusiness development
2 corporation.

3 §163D- **Rules and regulations.** Notwithstanding section
4 141-2 to the contrary, the agribusiness development corporation
5 may establish, prescribe, modify, or alter rules, subject to
6 chapter 91, to carry out and effectuate the purpose of this
7 part. The rules shall have the force and effect of law to
8 control the advertisement of fresh fruits, fresh vegetables, and
9 coffee, whether imported or produced in the State, and shall
10 include requirements for specifying size, grade, geographic
11 origin, or quality in conjunction with price.

12 In establishing rules, the corporation shall consult with
13 appropriate state and federal agencies and appropriate
14 industries or trade organizations. The rules for controlling
15 advertising and requirements for specifying size, grade,
16 geographic origin, or quality in conjunction with price shall be
17 on the basis of what the corporation deems best suited to the
18 interest of the consumer, the producer, and the public.

19 §163D- **Duties of chairperson; violations; proceedings;**
20 **penalties.** The chairperson shall enforce this part and any rule
21 adopted by the corporation.



1 The following penalties and remedies shall apply in
2 instances of violations of this part or the rules adopted by the
3 corporation:

4 (1) Violation of this part or of any rule adopted
5 thereunder is declared a public nuisance and may be
6 enjoined or abated; and

7 (2) Every person who violates this part or any rule
8 adopted thereunder shall, after notice and opportunity
9 for a hearing, be fined not less than \$50 nor more
10 than \$500. Each day a violation continues shall
11 constitute a separate offense. Any action taken to
12 impose or collect the penalty provided for in this
13 section shall be considered a civil action.

14 The penalties and remedies prescribed in this part shall be
15 concurrent and alternative with any and all other civil,
16 criminal, or alternative rights, remedies, or penalties provided
17 by law."

18 SECTION 3. Section 141-1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§141-1 Duties in general.** The department of agriculture
21 shall:



- 1 (1) Gather, compile, and tabulate, from time to time,
2 information and statistics concerning:
- 3 (A) Entomology and plant pathology: Insects, scales,
4 blights, and diseases injurious or liable to
5 become injurious to trees, plants, or other
6 vegetation, and the ways and means of
7 exterminating pests and diseases already in the
8 State and preventing the introduction of pests
9 and diseases not yet here; and
- 10 (B) General agriculture: Fruits, fibres, and useful
11 or ornamental plants and their introduction,
12 development, care, and manufacture or
13 exportation, with a view to introducing,
14 establishing, and fostering new and valuable
15 plants and industries;
- 16 (2) Encourage and cooperate with the agricultural
17 extension service and agricultural experiment station
18 of the University of Hawaii and all private persons
19 and organizations doing work of an experimental or
20 educational character coming within the scope of the
21 subject matter of chapters 141, 142, and 144 to 150A,



1 and avoid, as far as practicable, duplicating the work
2 of those persons and organizations;

3 (3) Enter into contracts, cooperative agreements, or other
4 transactions with any person, agency, or organization,
5 public or private, as may be necessary in the conduct
6 of the department's business and on such terms as the
7 department may deem appropriate; provided that the
8 department shall not obligate any funds of the State,
9 except the funds that have been appropriated to the
10 department. Pursuant to a cooperative agreement with
11 any authorized federal agency, employees of the
12 cooperative agency may be designated to carry out, on
13 behalf of the State the same as department personnel,
14 specific duties and responsibilities under chapters
15 141, 142, 150A, and rules adopted pursuant to those
16 chapters, for the effective prosecution of pest
17 control and animal disease control and the regulation
18 of import into the State and intrastate movement of
19 regulated articles;

20 (4) Secure copies of the laws of other states,
21 territories, and countries, and other publications
22 germane to the subject matters of chapters 141, 142,



1 and 144 to 150A, and make laws and publications
2 available for public information and consultation;
3 (5) Provide buildings, grounds, apparatus, and
4 appurtenances necessary for the examination,
5 quarantine, inspection, and fumigation provided for by
6 chapters 141, 142, and 144 to 150A; for the obtaining,
7 propagation, study, and distribution of beneficial
8 insects, growths, and antidotes for the eradication of
9 insects, blights, scales, or diseases injurious to
10 vegetation of value and for the destruction of
11 injurious vegetation; and for carrying out any other
12 purposes of chapters 141, 142, and 144 to 150A;
13 (6) Formulate and recommend to the governor and
14 legislature additional legislation necessary or
15 desirable for carrying out the purposes of chapters
16 141, 142, and 144 to 150A;
17 (7) Publish at the end of each year a report of the
18 expenditures and proceedings of the department and of
19 the results achieved by the department, together with
20 other matters germane to chapters 141, 142, and 144 to
21 150A and that the department may deem proper;



- 1 (8) Administer a program of agricultural planning and
2 development, including the formulation and
3 implementation of general and special plans, including
4 but not limited to the functional plan for
5 agriculture; administer the planning, development, and
6 management of the agricultural park program; plan,
7 construct, operate, and maintain the state irrigation
8 water systems; review, interpret, and make
9 recommendations with respect to public policies and
10 actions relating to agricultural land and water use;
11 assist in research, evaluation, development,
12 enhancement, and expansion of local agricultural
13 industries; and serve as liaison with other public
14 agencies and private organizations for the above
15 purposes. In the foregoing, the department shall act
16 to conserve and protect agricultural lands and
17 irrigation water systems, promote diversified
18 agriculture, increase agricultural self-sufficiency,
19 and ensure the availability of agriculturally suitable
20 lands; [~~and~~]
- 21 (9) Manage, administer, and exercise control over any
22 public lands, as defined under section 171-2, that are



1 designated important agricultural lands pursuant to
2 section 205-44.5, including but not limited to
3 establishing priorities for the leasing of these
4 public lands within the department's jurisdiction[-];
5 and

6 (10) Assist the agribusiness development corporation in the
7 enforcement of the statutes and rules pertaining to
8 the advertising and marketing of fresh fruits, fresh
9 vegetables, and coffee, whether imported or produced
10 in the State."

11 SECTION 4. Section 141-2, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§141-2 Rules. Subject to chapter 91 the department of
14 agriculture shall adopt, amend, and repeal rules not
15 inconsistent with law, for and concerning:

16 (1) The introduction, transportation, and propagation of
17 trees, shrubs, herbs, and other plants;

18 (2) The quarantine, inspection, fumigation, disinfection,
19 destruction, or exclusion, either upon introduction
20 into the State, or at any time or place within the
21 State, of any nursery-stock, tree, shrub, herb, vine,
22 cut-flower, cutting, graft, scion, bud, seed, leaf,



1 root, or rhizome; any nut, fruit, or vegetable; any
2 grain, cereal, or legume in the natural or raw state;
3 any moss, hay, straw, dry-grass, or other forage; any
4 unmanufactured log, limb, or timber; or any other
5 plant growth or plant product unprocessed or in the
6 raw state; any sand, soil, or earth; any live bird,
7 reptile, insect, or other animal, in any stage of
8 development, that is in addition to the so-called
9 domestic animals, which are provided for in section
10 142-2; and any box, barrel, crate, or other containers
11 in which the articles, substances, or objects have
12 been transported or contained, and any packing
13 material used in connection therewith, that is or may
14 be diseased or infested with insects or likely to
15 assist in the transmission or dissemination of any
16 insect or plant disease injurious, harmful, or
17 detrimental, or likely to become injurious, harmful,
18 or detrimental to the agricultural or horticultural
19 industries or the forests of the State, or that is or
20 may be in itself injurious, harmful, or detrimental to
21 the same (included therein may be rules governing the
22 transportation of any of the articles, substances, or



1 objects enumerated above in this section between
2 different localities on any one of the islands within
3 the State);

- 4 (3) The prohibition of importation into the State, from
5 any or all foreign countries or from other parts of
6 the United States, or the shipment from one island
7 within the State to another island therein, or the
8 transportation from one part or locality of any island
9 to another part or locality of the same island, of any
10 specific article, substance, or object or class of
11 articles, substances, or objects, among those
12 enumerated above in this section, that is diseased or
13 infested with insects or likely to assist in the
14 transmission or dissemination of any insect or plant
15 disease injurious, harmful, or detrimental or likely
16 to be injurious, harmful, or detrimental to the
17 agricultural or horticultural industries, or the
18 forests of the State, or that is or may be in itself
19 injurious, harmful, or detrimental to the same;

- 20 (4) The preparation by cargo carriers of manifests of
21 cargo transported into the State or between islands of



1 the State and the submission of the manifests to the
2 department; and

3 (5) The manner in which agricultural [~~product promotion~~
4 and] research activities may be undertaken, after
5 coordinating with the agribusiness development
6 corporation.

7 All rules adopted under this section shall have the force
8 and effect of law."

9 SECTION 5. Section 163D-4, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Except as otherwise limited by this chapter, the
12 corporation may:

- 13 (1) Sue and be sued;
- 14 (2) Have a seal and alter the same at its pleasure;
- 15 (3) Make and alter bylaws for its organization and
16 internal management;
- 17 (4) Adopt rules under chapter 91 necessary to effectuate
18 this chapter in connection with its projects,
19 operations, and properties [7], including rules
20 regarding the manner in which agricultural product
21 promotion activities may be undertaken;



- 1 (5) Make and execute contracts and all other instruments
2 necessary or convenient for the exercise of its powers
3 and functions under this chapter;
- 4 (6) Carry out surveys, research, and investigations into
5 technological, business, financial, consumer trends,
6 and other aspects of agricultural production in the
7 national and international community;
- 8 (7) Acquire or contract to acquire by grant or purchase
9 any real, personal, or mixed property or any interest
10 therein for its immediate or future use for the
11 purposes of this chapter; own, hold, improve, and
12 rehabilitate any real, personal, or mixed property
13 acquired, and sell, assign, exchange, transfer,
14 convey, lease, or otherwise dispose of, or encumber
15 the same;
- 16 (8) By itself, or in partnership with qualified persons,
17 acquire, construct, reconstruct, rehabilitate,
18 improve, alter, or repair any infrastructure or
19 accessory facilities in connection with any project;
20 own, hold, sell, assign, transfer, convey, exchange,
21 lease, or otherwise dispose of, or encumber any
22 project;



1 (9) In cooperation with the department of agriculture,
2 pursuant to chapter 167, or otherwise through direct
3 investment or coventure with a professional investor
4 or enterprise or any other person, or otherwise, to
5 acquire, construct, operate, and maintain water
6 facilities for conveying, distributing, and
7 transmitting water for irrigation and agricultural
8 uses at rates or charges determined by the
9 corporation; provided that:

10 (A) This chapter shall not be construed to permit or
11 allow the department of agriculture or any
12 agribusiness development corporation to:

13 (i) Amend or modify rights or entitlements to
14 water as provided for by article XI, section
15 7, of the Constitution of the State of
16 Hawaii, or the Hawaiian Homes Commission
17 Act, 1920, as amended, and chapter 168;

18 (ii) Diminish or abridge the traditional and
19 customary rights of ahupua'a tenants who
20 inhabited the Hawaiian Islands prior to 1778
21 under sections 1-1 and 7-1; and



1 (iii) Impair, abridge, or terminate the legal
2 rights or interests to water and its uses,
3 whether by lease, easement, or other means,
4 which are possessed or held by organizations
5 whose primary purpose is to benefit people
6 of Hawaiian ancestry; and

7 (B) All usage of water shall be in accordance with
8 chapter [†]174C[†] and other applicable laws in
9 the State;

10 (10) Assist agricultural enterprises by conducting detailed
11 marketing analysis and developing marketing and
12 promotional strategies to strengthen the position of
13 those enterprises and to better exploit local,
14 national, and international markets;

15 (11) Carry out specialized programs designed to develop new
16 markets for Hawaii agricultural products;

17 (12) Receive, examine, and determine the acceptability of
18 applications of qualified persons for allowances or
19 grants for the development of new crops and
20 agricultural products, the expansion of established
21 agricultural enterprises, and the altering of existing
22 agricultural enterprises;



- 1 (13) Coordinate its activities with any federal or state
2 farm credit programs;
- 3 (14) Grant options to purchase any project or to renew any
4 lease entered into by it in connection with any of its
5 projects, on the terms and conditions it deems
6 advisable;
- 7 (15) Provide advisory, consultative, training, and
8 educational services, technical assistance, and advice
9 to any person, partnership, or corporation, either
10 public or private, in order to carry out the purposes
11 of this chapter, and engage the services of
12 consultants on a contractual basis for rendering
13 professional and technical assistance and advice;
- 14 (16) Procure insurance against any loss in connection with
15 its property and other assets and operations in such
16 amounts and from such insurers as it deems desirable;
- 17 (17) Accept gifts or grants in any form from any public
18 agency or any other source; [~~and~~]
- 19 (18) Develop standards for and certify all agricultural
20 products made, grown, or manufactured in the State of
21 Hawaii; and



1 [~~18~~] (19) Do all things necessary or proper to carry out
2 the purposes of this chapter."

3 SECTION 6. Chapter 148, part I, Hawaii Revised Statutes,
4 is repealed.

5 SECTION 7. All rights, powers, functions, and duties of
6 the department of agricultural as they relate to the advertising
7 and marketing of fresh fruits, fresh vegetables, and coffee are
8 transferred to the agricultural development corporation.

9 All officers and employees whose functions are transferred
10 by this Act shall be transferred with their functions and shall
11 continue to perform their regular duties upon their transfer,
12 subject to the state personnel laws and this Act.

13 No officer or employee of the State having tenure shall
14 suffer any loss of salary, seniority, prior service credit,
15 vacation, sick leave, or other employee benefit or privilege as
16 a consequence of this Act, and such officer or employee may be
17 transferred or appointed to a civil service position without the
18 necessity of examination; provided that the officer or employee
19 possesses the minimum qualifications for the position to which
20 transferred or appointed; and provided that subsequent changes
21 in status may be made pursuant to applicable civil service and
22 compensation laws.



1 An officer or employee of the State who does not have
2 tenure and who may be transferred or appointed to a civil
3 service position as a consequence of this Act shall become a
4 civil service employee without the loss of salary, seniority,
5 prior service credit, vacation, sick leave, or other employee
6 benefits or privileges and without the necessity of examination;
7 provided that such officer or employee possesses the minimum
8 qualifications for the position to which transferred or
9 appointed.

10 If an office or position held by an officer or employee
11 having tenure is abolished, the officer or employee shall not
12 thereby be separated from public employment, but shall remain in
13 the employment of the State with the same pay and classification
14 and shall be transferred to some other office or position for
15 which the officer or employee is eligible under the personnel
16 laws of the State as determined by the head of the department or
17 the governor.

18 SECTION 8. All appropriations, records, equipment,
19 machines, files, supplies, contracts, books, papers, documents,
20 maps, and other personal property heretofore made, used,
21 acquired, or held by the department of agriculture relating to
22 the functions transferred to the agribusiness development



1 corporation shall be transferred with the functions to which
2 they relate.

3 SECTION 9. All rules, policies, procedures, guidelines,
4 and other material adopted or developed by the department of
5 agriculture to implement provisions of the Hawaii Revised
6 Statutes which are reenacted or made applicable to the
7 agribusiness development corporation by this Act, shall remain
8 in full force and effect until amended or repealed by the board
9 of directors of the agribusiness development corporation
10 pursuant to chapter 91, Hawaii Revised Statutes. In the
11 interim, every reference to the department of agriculture in
12 those rules, policies, procedures, guidelines, and other
13 material is amended to refer to the agribusiness development
14 corporation or chairperson of the board of directors of the
15 agribusiness development corporation.

16 SECTION 10. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 11. This Act shall take effect upon its approval.
19

INTRODUCED BY:

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S.B. NO. 2367

Report Title:

Department of Agriculture; Agribusiness Development Corporation;
Advertising and Marketing

Description:

Transfers the authority and enforcement responsibilities relating to the advertising and marketing of fresh fruits, fresh vegetables, and coffee from the DOA to the ADC. Requires the DOA to assist the ADC in regulating the advertising and marketing of fresh fruits, fresh vegetables, and coffee. Authorizes the ADC to develop standards for and certify all agricultural products made, grown, or manufactured in the State of Hawaii.

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