

JAN 29 2015

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 the State must meet
2 its constitutional mandate of conserving agricultural lands.
3 Article XI, section 3, of the Constitution of the State of
4 Hawaii outlines the State's responsibilities to conserve and
5 protect agricultural lands. It also charges the State with the
6 responsibility of promoting diversified agriculture, increasing
7 agricultural self-sufficiency, and assuring the availability of
8 agriculturally suitable lands. The State established the
9 agribusiness development corporation in 1994, and tasked it with
10 a top priority of transitioning Hawaii's agriculture industry
11 from a dominance of sugar and pineapple to a greater diversity
12 of crops.

13 Hawaii's environmental response, energy, and food security
14 tax provides a funding source for energy and food security
15 initiatives. Of the \$1.05 per barrel tax on petroleum products
16 other than aviation fuel only 45 cents are allocated to



1 supporting environmental response, energy, and food security.

2 The remaining 60 cents are deposited in the general fund.

3 The purpose of this Act is to align the environmental
4 response, energy, and food security tax with its original intent
5 by reallocating a portion of the tax from the general fund to
6 the agribusiness development corporation to fund additional
7 positions within the corporation and to fund the purchase of
8 agricultural land.

9 SECTION 2. Section 243-3.5, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) In addition to any other taxes provided by law,
12 subject to the exemptions set forth in section 243-7, there is
13 hereby imposed a state environmental response, energy, and food
14 security tax on each barrel or fractional part of a barrel of
15 petroleum product sold by a distributor to any retail dealer or
16 end user of petroleum product, other than a refiner. The tax
17 shall be \$1.05 on each barrel or fractional part of a barrel of
18 petroleum product that is not aviation fuel; provided that of
19 the tax collected pursuant to this subsection:



1 (1) 5 cents of the tax on each barrel shall be deposited
2 into the environmental response revolving fund
3 established under section 128D-2;

4 (2) 15 cents of the tax on each barrel shall be deposited
5 into the energy security special fund established
6 under section 201-12.8;

7 (3) 10 cents of the tax on each barrel shall be deposited
8 into the energy systems development special fund
9 established under section [+]304A-2169.1[+]; [~~and~~]

10 (4) 15 cents of the tax on each barrel shall be deposited
11 into the agricultural development and food security
12 special fund established under section 141-10[-]; and

13 (5) _____ cents of the tax on each barrel shall be
14 deposited into the Hawaii agricultural development
15 revolving fund established under section 163D-17.

16 The tax imposed by this subsection shall be paid by the
17 distributor of the petroleum product."

18 SECTION 3. Section 163D-17, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§163D-17 Hawaii agricultural development revolving fund;**
21 **established; use of corporation funds.** (a) There is



1 established the Hawaii agricultural development revolving fund,
2 to which shall be credited any state appropriations to the fund
3 or other moneys made available to the fund, to be expended as
4 directed by the corporation.

5 (b) The corporation shall hold the fund in an account or
6 accounts separate from other funds. The corporation shall
7 invest and reinvest the fund and the income thereof to:

8 (1) Purchase qualified securities issued by enterprises
9 for the purpose of raising seed capital; provided that
10 the investment shall comply with the requirements of
11 this chapter;

12 (2) Make grants, loans, and provide other monetary forms
13 of assistance necessary to carry out the purposes of
14 this chapter; and

15 (3) Purchase securities as may be lawful investments for
16 fiduciaries in the State.

17 All appropriations, grants, contractual reimbursements, and
18 other funds not designated for this purpose may be used to pay
19 for the proper general expenses and to carry out the purposes of
20 the corporation.



1 (c) Any moneys deposited into the fund pursuant to section
2 243-3.5 shall be expended at the sole discretion of the
3 executive director for the following purposes:

- 4 (1) To fund the position of project manager;
5 (2) To fund the position of property manager; and
6 (3) To acquire agricultural lands.

7 [~~e~~] (d) The corporation shall purchase qualified
8 securities issued by an enterprise only after:

9 (1) Receiving:

10 (A) An application from the enterprise containing a
11 business plan, which is consistent with the
12 business and agricultural development plan,
13 including a description of the enterprise and its
14 management, product, and market;

15 (B) A statement of the amount, timing, and projected
16 use of the capital required;

17 (C) A statement of the potential economic impact of
18 the enterprise, including the number, location,
19 and types of jobs expected to be created; and

20 (D) Any other information as the corporation shall
21 require;



- 1 (2) Determining, based upon the application submitted,
2 that:
- 3 (A) The proceeds of the investment will be used only
4 to cover the seed capital needs of the
5 enterprise, except as authorized in this section;
- 6 (B) The enterprise has a reasonable chance of
7 success;
- 8 (C) The enterprise has the reasonable potential to
9 create employment within the State and offers
10 employment opportunities to residents;
- 11 (D) The coordinating entrepreneur and other founders
12 of the enterprise have already made or are
13 prepared to make a substantial financial and time
14 commitment to the enterprise;
- 15 (E) The securities to be purchased are qualified
16 securities;
- 17 (F) There is reasonable possibility that the
18 corporation will recoup at least its initial
19 investment; and
- 20 (G) Binding commitments have been made to the
21 corporation by the enterprise for adequate



1 reporting of financial data to the corporation,
2 which shall include a requirement for an annual
3 or other periodic audit of the books of the
4 enterprise, and for control by the corporation
5 that it considers prudent over the management of
6 the enterprise, in order to protect the
7 investment of the corporation, including
8 membership on the board of directors of the
9 enterprise, ownership of voting stock, input in
10 management decisions, and the right of access to
11 the financial and other records of the
12 enterprise; and

- 13 (3) Entering into a binding agreement with the enterprise
14 concerning the manner of payback by the enterprise of
15 the funds advanced, granted, loaned, or received from
16 the corporation. The manner of payback may include
17 the payment of dividends, returns from the public sale
18 of corporate securities or products, royalties, and
19 other methods of payback acceptable to the
20 corporation. In determining the manner of payback the
21 corporation shall establish a rate of return or rate



1 of interest to be paid on any investment, loan, or
2 grant of corporation funds under this section.

3 [~~(d)~~] (e) If the corporation makes a direct investment, it
4 shall also find that a reasonable effort has been made to find a
5 professional investor to make an investment in the enterprise as
6 a coventure, and that the effort was unsuccessful. The
7 findings, when made by the corporation, shall be conclusive.

8 [~~(e)~~] (f) The corporation shall not make investments in
9 qualified securities issued by an enterprise in excess of the
10 following limits:

11 (1) Not more than \$500,000 shall be invested in the
12 securities of any one enterprise, except that more
13 than a total of \$500,000 may be invested in the
14 securities of any one enterprise, if the corporation
15 finds, after its initial investment, that additional
16 investments in that enterprise are required to protect
17 the initial investment of the corporation, and the
18 other findings set forth in subsections (d) and (e)
19 are made as to the additional investment;

20 (2) The corporation shall not own securities representing
21 more than forty-nine per cent of the voting stock of



1 any one enterprise at the time of purchase by the
 2 corporation after giving effect to the conversion of
 3 all outstanding convertible securities of the
 4 enterprise, except that in the event of severe
 5 financial difficulty of the enterprise, threatening
 6 the investment of the corporation in the enterprise, a
 7 greater percentage of those securities may be owned by
 8 the corporation; and

9 (3) Not more than fifty per cent of the assets of the
 10 corporation shall be invested in direct investments at
 11 any time.

12 [~~(f)~~] (g) No investment, loan, grant, or use of corporate
 13 funds for the purposes of this chapter shall be subject to
 14 chapter 42F."

15 SECTION 4. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 2015.

18 INTRODUCED BY:

Dan Claitor
Freddie G. Fong
Johnnie O'Connell
Clarence K. Dickerson



S.B. NO. 1293

Report Title:

Agricultural Lands; Tax; Agribusiness Development Corporation

Description:

Amends the environmental response, energy, and food security tax to allocate a greater portion of the proceeds toward agricultural diversification activities. Directs funds deposited into the Hawaii agricultural development revolving fund through the environmental response, energy, and food security tax to be expended to fund positions within the corporation and to acquire agricultural land.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

