

"[CHAPTER 168]
IRRIGATION AND WATER UTILIZATION PROJECTS

Section

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" **[\$168-1] Administration of chapter.** The board of agriculture in its irrigation water development program is charged with the administration of this chapter. [L 1987, c 306, pt of §2]

" **§168-2 Powers.** In addition to any other powers conferred upon the board of agriculture, the board shall have the powers hereinafter set forth. The board shall have the power to make preliminary surveys and engineering studies, and to construct irrigation and water utilization projects, designed to serve and supply the owners and occupants of lands, and to manage, control, operate, and maintain the projects in accordance with this chapter. If, in the board's reasonable discretion, existing civil service staff is inadequate to service the projects or the project facilities, the board shall also have the power to contract for services with the private sector for operation or maintenance of project facilities with any qualified person. It shall also have the power to contract with domestic water users including the counties. It shall further have the power to contract with the government of the United States or any bureau or agency thereof with regard to the construction or the financing of a system.

The board shall have power to fix, charge, and collect reasonable water rates for service from the water system to defray the cost of operation, maintenance, and replacements of the system. It shall also have the power to acquire by eminent domain, water and water sources either above or underground watersheds, reservoir sites, rights-of-way over lands and property for paths, trails, roads, and landing sites, ditches, tunnels, flumes, reservoirs, and pipelines necessary or proper for the construction and maintenance of a system for conveying, distributing, and transmitting water for irrigation and domestic use and for such other purposes as may properly fall within the scope of its activities in creating, managing, controlling, operating, and maintaining an irrigation and water utilization system. The power of eminent domain shall be exercised in the manner and under the procedure provided by law. [L 1987, c 306, pt of §2; am L 1998, c 289, §1]

" **[\$168-3] Funds.** The board of agriculture shall pay all receipts and revenues received by it from the operation of an irrigation and water utilization system into the irrigation system revolving fund established under section 167-22. The fund shall be used and expended for the following purposes:

- (1) Payment of the operating and maintenance costs of the system;
- (2) Repairs, replacements, additions, and extensions;

(3) Reimbursement to the State the amount of any principal or interest due upon any bond issue under this chapter. [L 1987, c 306, pt of §2]

" **[\$168-4] Preference.** To the extent that the same may be necessary from time to time for the satisfaction of their water needs, domestic and agricultural, the Hawaiian homes commission and lessees of the Hawaiian homes commission shall at all times, upon actual need therefor being shown to the board of agriculture, have a prior right to two-thirds of the water developed for the Molokai irrigation and water utilization project by the tunnel development extending to Waikolu valley and ground water developed west of Waikolu valley, which was planned by the board of land and natural resources as the first stage of the Molokai irrigation project. [L 1987, c 306, pt of §2]

" **§168-5 Irrigation systems account.** (a) There shall be a special account in the irrigation system revolving fund of the board of agriculture to be known as the "irrigation systems account". The director of finance may make temporary use of any portion or all of the money not immediately needed for construction and operation of an irrigation system for the purpose of paying warrants drawn on the treasury for current indebtedness of the State, or for deposit in the state sinking fund for the repayment of bonds, or for investment in state bonds; provided that sufficient of the sums so taken, deposited or invested shall be redeposited to the credit of the irrigation systems account prior to the time when any engagement for the payment from the account falls due.

The moneys from the account shall be expended upon warrants drawn by the comptroller for the purposes of this chapter.

(b) In connection with the construction, operation, or maintenance of a project, the board may use such contributions of labor, materials, and property, including money, as may be allocated or otherwise made available by any person or instrumentality whatsoever, if in the judgment of the board the acceptance thereof, will not limit the scope of construction or operation of a project provided for by this chapter.

(c) Money received and accepted under this section shall be available for expenditure for the purposes for which contributed in like manner as if the sums had been specifically appropriated for such purposes.

(d) Any provision of this chapter or any other state law to the contrary notwithstanding, it is expressly provided that, in the event that it is found possible to secure federal funds made available under any act of Congress to be expended in

connection with or for the construction of a project authorized by this chapter, the board may enter into such undertakings with the proper officers or agencies of the federal government, agree to such conditions, and do and perform such other acts and things as may be necessary, or be required by such acts of Congress or any regulations or requirements of the federal government, as a condition to securing the federal funds for the project.

(e) Any other provision of law to the contrary notwithstanding, any bonds issued under this chapter may, with the approval of the governor, be deposited with and pledged to, or be otherwise disposed of to, the United States or any board, agency, or instrumentality of the United States government, to secure the repayment, or in actual payment, of any loans or advances made or to be made, under any act or acts of Congress authorizing the loans or advances, by the United States or any such board, agency, or instrumentality to the State for the construction, in whole or in part, of a project authorized under this chapter or the cost of which, or any portion thereof, would be payable or could legally be paid, out of the proceeds of the bonds if sold.

(f) Any other provision of law to the contrary notwithstanding, the board may use moneys from the irrigation [systems] account to contract for operation or maintenance of the project facilities if the board deems such action to be in the public interests. [L 1987, c 306, pt of §2; am L 1998, c 289 §2]

" **[\$168-6] Development period.** The board of agriculture shall fix a development period for a project authorized by this chapter not to exceed ten years from and including the first calendar year in which water is first delivered for the lands in the project. During the development period the board shall annually fix the tolls to be charged for water use and for acreage service charges, so that the cost of operation and maintenance of the project during the development period plus any amounts reimbursable to the State under section 168-3 will be returned over the full development period. [L 1987, c 306, pt of §2]

" **[\$168-7] Construction, when.** No actual construction of the physical features of a project shall be undertaken unless (1) lands or interests in lands deemed by the board of agriculture to be necessary for the construction and operation of the major features of the project works have been secured, or negotiations therefor have been initiated and it is indicated that the lands or interests in lands can be secured, at prices

satisfactory to the board; and (2) the board has found (A) that water rights adequate for the purposes of the project have been acquired with titles and at prices satisfactory to the board or have been initiated and can be perfected in conformity with the law of the State and in a manner satisfactory to the board, and (B) that the water rights can be utilized for the purposes of the projects in a manner satisfactory to the board. [L 1987, c 306, pt of §2]

" **[\$168-8] Rules.** The board of agriculture may perform any and all acts and make such rules as may be necessary and proper for the purpose of carrying out this chapter, which upon compliance with chapter 91 shall have the force and effect of law. [L 1987, c 306, pt of §2]