

CHAPTER 174
WATER AND LAND DEVELOPMENT

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Note

Formerly entitled "Hawaii Water Authority", this chapter was completely reenacted by L 1961, c 166, §§2, 3. For prior law see RLH chapter 86 and L 1957, c 22 and c 109.

L 2014, c 218, §8 purports to amend this chapter.

Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

" **§174-1 Findings and declaration of necessity.** It is hereby found that it is important to the welfare of the people of Hawaii that the overall economy of the State including but not limited to agricultural production, be developed as fully as possible. It is further found that water presently tapped for consumption is inadequate for the fullest development of the economy of the State. It is therefore hereby declared that additional land and water facilities are necessary for the development of the overall economy of the State.

It is the intent of the legislature that no project under this chapter shall be organized in the city and county of Honolulu or other counties without the board of land and natural resources first consulting the board of water supply of the city and county of Honolulu or the water board or department of each county. [L 1961, c 166, pt of §3; Supp, §86-1; HRS §174-1; am L 1987, c 306, §3]

Cross References

Irrigation and water utilization projects, see chapter 168.
Irrigation water development, see chapter 167.

" **§174-2 Definitions.** The following terms, whenever used and referred to in this chapter, have the following respective meanings, unless a different meaning clearly appears in the context:

"Acreage assessments" means any levy imposed pursuant to this chapter on the land within a project and any amount charged to the State or to the Hawaiian homes commission for the purpose of acquiring, establishing, or maintaining land or water facilities.

"Board" means the board of land and natural resources.

"Government" includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

"Land occupier" means the owner or in the case of leased land, the lessee of lands lying within a project organized or to be organized under this chapter.

"Leased land", "leasehold", and similar expressions wherever used in this chapter shall be deemed to include land subject to and held under lease or other tenancy, purchase or homestead agreement; "lease" wherever used herein means such lease, tenancy, purchase or homestead agreement; "lessor" wherever used herein includes the lessor, landlord, seller, or State as grantor of the homestead; and "lessee" wherever used herein includes the lessee, tenant, purchaser, or homesteader under such lease or other agreement, as the case may be.

"Project" means an area, contiguous or noncontiguous, established under this chapter within which water is supplied to the State or the Hawaiian homes commission for the development and opening of lands or to land occupiers.

"Water facility" includes all real and personal property, together with all improvements to the same, acquired or constructed pursuant to a plan or undertaking to provide water within a project for economic development, under this chapter.

"Water tolls" means any charges established by the board for water supplied by it to the State, the Hawaiian homes commission, and land occupiers. [L 1961, c 166, pt of §3; Supp, §86-2; HRS §174-2; am L 1987, c 306, §4]

" **§174-3 Manager-chief engineer.** The board of land and natural resources shall appoint a registered professional engineer who shall act as manager-chief engineer of the water and land development program and have such qualifications as the board may deem necessary. The appointment and removal of the manager-chief engineer shall be in accordance with chapter 76 and the manager-chief engineer shall perform the duties as set forth by the board. [L 1961, c 166, pt of §3; Supp, §86-3; HRS §174-3; gen ch 1985; am L 2000, c 253, §150]

" **§174-4 Interested members of the board or employees.** No member of the board of land and natural resources or employees of the board shall acquire any interest, direct or indirect, in any land or water facility or project or in any property, included or planned to be included in any facility or project, nor shall any member of the board or employee of the board have any interest, direct or indirect, in any contract or proposed contract, for materials or services to be furnished or used in connection with any land or water facility or project. If any member of the board or employee of the board owns or controls an interest, direct or indirect, in any property included or planned to be included in any land or water facility or project,

the member of the board or employee of the board shall immediately disclose the same in writing to the board and the disclosure shall be entered upon the minutes of the board. The member of the board or employee shall be immediately disqualified from taking any part in the action of the board relative to the land or water facility or project. Failure to so disclose the interest shall constitute misconduct in office. [L 1961, c 166, pt of §3; Supp, §86-4; HRS §174-4; gen ch 1985; am L 1987, c 306, §5]

" **§174-5 Powers.** (a) In addition to all the powers granted to the board of land and natural resources in chapter 171 for the purpose of carrying out all of its functions and duties, the board shall have the following powers for the purposes of this chapter:

- (1) To acquire by eminent domain, water and water sources either above or underground, watershed, 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 water facilities for conveying, distributing, and transmitting water for domestic use and for such other purposes as may properly fall within the scope of its activities in creating, managing, controlling, operating, and maintaining water facilities, any of which purposes shall be held to be for a public use and purpose;
- (2) To make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the board, including, without prejudice to the generality of the foregoing, contracts and other instruments for the purchase or sale of water and for the purchase or lease of water facilities for the overall economic development of the area, including but not limited to the land on which the facilities are situated, and for securing to the owners and occupiers of land already using water in a project a priority right to so much water from those of their sources and facilities which are taken over for the project as is required for the purposes or needs of the land, as such purposes or needs exist at the inception of the project or are then contemplated in the immediate future;
- (3) To make and from time to time amend and repeal bylaws and rules not inconsistent with this chapter, which upon compliance with chapter 91 shall have the force

and effect of law, to carry into effect the powers and purposes of the board;

- (4) To make surveys for the purpose of determining the engineering and economic feasibility of each project;
- (5) To conduct feasibility studies of the economic potential of the area;
- (6) To determine the probable costs and value of providing water for economic development in any proposed project;
- (7) To investigate and make surveys of water resources, including the possibility and feasibility of inducing rain by artificial or other means;
- (8) To define and redefine the boundaries of projects and to consolidate or separate projects, existing or proposed pursuant to this chapter, provided that in the event the redefinition of the boundaries of or the consolidation or separation previously effected increases the total amount required to be derived from acreage assessments upon lands within the existing project or projects by more than five per cent or will require an increase in the tolls charged for water supplied to the lands or will reduce the amount of water normally available for distribution to the lands, then the redefinition, consolidation, or separation may be accomplished only after notice has been published and a public hearing held as required for the formation of a project upon the initiative of the board.

At the hearing, right to protest and the procedure relative to protest shall be the same as specified in section 174-17 concerning the formation of projects, and the proposed redefinition of boundaries, consolidation, or separation of projects shall not be accomplished if protests, such as would be sufficient to prevent the action if it were the formation of a project, are filed by owners and lessees of land within the existing project or projects affected thereby.

(b) The board is empowered, upon petition of land occupiers as provided by section 174-13, or upon petition of the Hawaiian homes commission or upon its own initiative, to prepare detailed plans for the acquisition or construction of facilities for economic development which in its opinion are economically feasible, to prepare estimates of the probable cost of each, and to prepare estimates of the water tolls and acreage assessments required for the cost of operation and the amortization of the investment of each project, so that the project shall be self-supporting. [L 1961, c 166, pt of §3; am L 1965, c 96, §58; Supp, pt of §86-5; HRS §174-5; am L 1987, c 306, §6]

Cross References

Acquisition of real property, attorney general's approval, see §107-10.

Case Notes

Board's powers generally and under Small Reclamation Project Act of 1956. 506 F.2d 572.

" **§174-6 Further powers.** (a) The board of land and natural resources shall also have power:

- (1) To establish the total amount of acreage assessments to be levied annually within each project;
- (2) To set and from time to time revise tolls which it shall charge for the water provided by its facilities, subject to the rate policies established hereunder; to establish priorities between the several lands included in a project according to the use to which the lands are put or other reasonable basis for classification; to govern the furnishing of water in the event of a shortage of supply and to correlate water tolls with such priorities;
- (3) To charge and collect such tolls, fees, and other charges established in connection herewith;
- (4) To sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein, to any person, firm, corporation, or government, except as prohibited by the laws of the State;
- (5) To hold, clear, and improve property;
- (6) To borrow money for any of the purposes hereunder;
- (7) To insure or provide for the insurance of the property or operations of the board against such risks as the board may deem advisable;
- (8) To include in any construction contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

The board shall also have the power to enter into any repayment or other contracts with the United States for the construction, operation, and maintenance of any projects as may be required or provided for by the federal reclamation laws, or acts amendatory thereof or supplementary thereto, or other

federal laws, and further to borrow money or accept grants or assistance from the federal government, or any department, bureau, or agency thereof with respect to the engineering, construction, operation, and financing of any project hereunder. The board shall make every effort to obtain all federal aid possible for the purposes of this chapter.

(b) In making surveys, studies, and investigations, in planning and designing, and in constructing projects and facilities for economic development, the board shall also have power to include therein surveys, studies, and investigations of, plans and designs for and construction of facilities for flood control and the utilization of water for the production of hydroelectric power, where the same may be practicable in conjunction with the formation and operation of a project or projects. [L 1961, c 166, pt of §3; Supp, pt of §86-5; HRS §174-6; am L 1987, c 306, §7]

Case Notes

Board's powers generally and under Small Reclamation Project Act of 1956. 506 F.2d 572.

" **§174-7 Issuance of revenue bonds.** The board of land and natural resources shall have the power to issue revenue bonds, as provided by part III of chapter 39 to finance in whole or in part, the cost of construction, acquisition, or maintenance of any facility or project hereunder, and, in connection therewith, to pledge for the punctual payment of the bonds, and interest thereon, any and all revenues derived from the project or projects for the construction, acquisition, or maintenance of which the bonds were issued, and the revenue of other or all projects, in an amount sufficient to pay the principal and interest of the bonds as they become due, and to create and maintain reasonable reserves or sinking funds therefor. Funds of the board, not otherwise required, may be advanced to pay necessary expenses incurred in making preparation for the initial issuance of bonds under this chapter, and to take any other action necessary or proper in connection therewith. Any project authorized by this chapter shall be designated an "undertaking" within the meaning of part III of chapter 39 and shall be the public undertaking, the revenues of which are hereby charged with the payment of the principal and interest of the bonds. [L 1961, c 166, pt of §3; Supp, §86-6; HRS §174-7]

" **§174-8 Investment of funds.** The director of finance may authorize the investment of any funds held in reserves, or any funds not required for immediate disbursement, in property or

securities in which savings banks may legally invest funds subject to their control. [L 1961, c 166, pt of §3; am L 1963, c 114, §1; Supp, §86-7; HRS §174-8]

" **§174-9 Security for funds deposited by board.** The board of land and natural resources may by resolution provide that all moneys deposited by it shall be secured:

- (1) By any securities by which funds deposited by the director of finance of the State may be legally secured, as provided in section 38-3; or
- (2) By an undertaking with such sureties as shall be approved by the board faithfully to keep and pay over upon the order of the board any such deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for the deposits. [L 1961, c 166, pt of §3; am L 1963, c 114, §1; Supp, §86-8; HRS §174-9]

Revision Note

Section "38-3" substituted for "38-2".

" **§174-10 Eligibility of revenue bonds for investment.** It shall be legal for the State and any of its political subdivisions, or any political or public corporation, including the employees' retirement system of the State, or any instrumentality of the State, or any insurance company, building and loan association, savings bank, trust company, or any bank or other financial institution operating under the laws of the State, or for any personal representative, guardian, trustee, or other fiduciary, or any educational, charitable, or eleemosynary institution to invest their funds or moneys in their custody in the revenue bonds issued hereunder; provided that the foregoing shall not be deemed to obviate or otherwise affect any statutory or other requirement with respect to the use of judgment and care in investing any such funds. No holder of any revenue bonds issued hereunder, however, shall have the right to compel any exercise of the taxing power of the State to pay the bonds or interest thereon. [L 1961, c 166, pt of §3; Supp, §86-9; HRS §174-10; am L 1976, c 200, pt of §1]

" **§174-11 Rate policy; sale of excess water.** The board of land and natural resources shall have the power to fix and adjust rates and charges for the furnishing of domestic water and for water service so that the revenues derived therefrom may be sufficient to cover the cost of operation, maintenance, and replacement and may make such charges as may be necessary to

cover the capital cost of the system or other costs incurred in connection with such system.

Nothing in this chapter shall be construed to prevent the board from selling water to persons other than land occupiers and other consumers within a water project in the event and to the extent that water in excess of the needs of the land occupiers and other consumers may from time to time be available. [L 1961, c 166, pt of §3; Supp, §86-10; HRS §174-11; am L 1981, c 72, §1; am L 1987, c 306, §8]

" **§174-12 REPEALED.** L 1987, c 306, §16.

" **§174-13 Petition of land occupiers for formation of water project.** Land occupiers, including the Hawaiian homes commission, comprising at least sixty per cent of the acreage of lands lying within an area proposed to be organized into a water project may file a petition with the board of land and natural resources requesting that the project be organized. Where any of the lands of the petitioners in the proposed area are leased lands, it shall be necessary for the lessor and lessee to join in the petition. The petition shall contain a general description and the acreage of the area proposed to be organized into a water project and shall state the acreage owned or leased by each of the petitioners within that area. Before the board shall commence any water project involving homesteaded lands of the Hawaiian homes commission, it shall require the commission to assure the payment of any acreage assessment thereon, in pursuance of section 208(5) of the Hawaiian Homes Commission Act, 1920. [L 1961, c 166, pt of §3; Supp, §86-12; HRS §174-13]

" **§§174-14, 15 REPEALED.** L 1987, c 306, §§17, 18.

" **§174-16 Consideration of petitions; notice and hearing.** When more than one petition is filed covering portions of the same territory, the board of land and natural resources may consolidate the petitions. Having received the petitions, on the basis of such evidence as may be submitted to it by the petitioners and on the findings of investigations or surveys made by or for it, or by other governmental agencies, the board shall establish such projects as it deems necessary to carry out the purposes of this chapter. Before making a final determination to establish a project or projects, the board shall hold a hearing, notice of which shall be duly advertised in the same manner and form, as nearly as may be, as provided in section 174-17. The department shall assure that adequate water is reserved for future development and use on Hawaiian home lands that could be served by the proposed water project. [L

1961, c 166, pt of §3; Supp, §86-15; HRS §174-16; am L 1987, c 306, §9; am L 1991, c 325, §4]

Law Journals and Reviews

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders. 25 UH L. Rev. 85.

" **§174-17 Formation of a project on initiative of board; notice and hearing; protests.** The board of land and natural resources may organize projects upon its own initiative. In this event, it shall fix a date for public hearing upon the proposed project, which date shall not be less than sixty days after the first public notice thereof in the county in which the project is proposed. The notice shall be given once in each of four successive weeks, and shall include notice of the area to be included in and general details of the proposed project, stating the time and place of the public hearing. If the owners of fifty-five per cent of the acreage of lands proposed to be organized into a project at the hearing or prior thereto shall file written protest against the proposed project, the project shall not be made and proceedings shall not be renewed within twelve months from the date of closing the public hearing, unless each and every owner protesting withdraws each and every owner's protest; provided that any lessee of any lands included within the proposed project, who, by the express terms of the lessee's lease must pay the assessment contemplated hereunder shall be subrogated to all the rights of the owner to protest by filing at the hearing or prior thereto written protest against the proposed project, the written protest to be accompanied by a certified copy of the lease; provided further that any lessor, at any time before the closing of the public hearing, may void the protest of the lessor's lessee on consideration of the filing with the board a duly acknowledged waiver of the provision in the lease which requires the lessee to pay the assessment, and a written undertaking of the lessor to pay the assessment to be made on account of the proposed project; and further provided that a project may be instituted without further public notice for a smaller acreage within the acreage described in the original public notice in the event the board determines the smaller project to be economically feasible, if written protests by the owners, or lessees subrogated to the right to protest, of fifty-five per cent of the smaller acreage shall not be filed. The department shall assure that adequate water is reserved for future development and use on Hawaiian home lands that could be served by the proposed water project.

[L 1961, c 166, pt of §3; Supp, §86-16; HRS §174-17; gen ch 1985; am L 1987, c 306, §10; am L 1991, c 325, §5; am L 1998, c 2, §41]

Law Journals and Reviews

Native Hawaiian Homestead Water Reservation Rights: Providing Good Living Conditions for Native Hawaiian Homesteaders. 25 UH L. Rev. 85.

" **§174-18 Approval of legislature, appropriations.** Funds for acquisition or construction of facilities for each project, established by the board of land and natural resources under sections 174-13 and 174-17, may be requested from the legislature, as an appropriation to be repaid without interest to the general funds of the State by the board from water tolls, acreage assessments, and other receipts of the board within such period as may be specified in the act making the appropriation. [L 1961, c 166, pt of §3; Supp, §86-17; HRS §174-18; am L 1987, c 306, §11]

" **§174-19 Administration of project; acreage assessments; liens.** All projects established pursuant to this chapter shall be administered by the board of land and natural resources. In making the final determination to establish a project, the board shall determine the proportion of acreage assessments to be borne by the land within the project. The board shall determine and certify to the director of taxation on or before March 31 of each year (1) the amount of acreage assessments necessary in that calendar year for acquisition, construction, and maintenance of facilities for each project, and (2) the acreage of each land occupier within the project.

Upon the certification the director of taxation or the director's properly authorized deputies or other assistants, shall determine the acreage assessment to be levied against the property of each land occupier by determining the amount of acreage assessments to be borne by the land within the project according to the proportion previously certified to the director by the board. The acreage assessments shall be collected by the director of taxation in the same manner as state taxes. Except in the case of public lands and lands designated as "available lands" under the Hawaiian Homes Commission Act, 1920, acreage assessments shall be a paramount lien against the entire tract, including improvements, of the land occupier of which the assessed land, or both, of the land occupier included within the projects forms a part. The lien may be foreclosed in the same manner as liens for state taxes and in accordance with sections

231-61 to 231-68. In case of the foreclosure of any homestead land pursuant to such sections the foreclosure sale shall be subject to chapter 171. In the case of public lands and lands designated as "available lands" under the Hawaiian Homes Commission Act, 1920, acreage assessments shall not constitute a lien on the property involved and notice of any delinquent acreage assessment shall be served upon the board of land and natural resources or the Hawaiian homes commission, as the case may be, for payment.

Acreage assessments shall be deemed revenues within the meaning of part III of chapter 39 and shall be used for the payment of the principal and interest of any revenue bonds issued hereunder.

Water tolls fixed by the board for each project under this chapter shall be collected by the board under such reasonable rules and procedures as it may establish and may modify from time to time.

All water tolls, acreage assessments, and receipts from properties sold by way of foreclosure for failure to pay acreage assessments shall be realizations of the board. [L 1961, c 166, pt of §3; Supp, §86-18; HRS §174-19; gen ch 1985; am L 1987, c 306, §12; am L 1989, c 14, §3]

Cross References

Conditions in land patents, see §171-25.

" **§174-20 Furnishing domestic water.** In conjunction with any project which it has established, and subject to pertinent provisions of law governing the supply, the board of land and natural resources may establish a system for and supply water for domestic purposes to residents within and in close proximity to the project. The system shall be established only if (1) the board determines that it would be advisable and in the public interest to provide the domestic supply; (2) its construction and operation by the board has been consented to by the board of water supply of the county in which the project is situated, and by a majority of the land occupiers within the project; and (3) if under normal conditions of water availability, the operation of the system will not prejudice or interfere with the supply of water to the land occupiers within the project. The board may also subject to the limitations previously set forth in this section, take over, improve, and operate any existing system for the supply of domestic water if requested so to do by the owners and operators of the system. [L 1961, c 166, pt of §3; am L 1963, c 193, §27; Supp, §86-19; HRS §174-20; am L 1987, c 306, §13]

Case Notes

Contract in which board rented excess transmission capacity in Molokai irrigation system without consent of homesteaders does not violate this section. 62 H. 546, 617 P.2d 1208.

" **§174-21 Repayment of certain state advances.** Whenever under legislative authorization, past, present or future, general obligation bonds of the State are issued or the proceeds of general obligation bonds of the State are used, by way of advancement, for the establishment and construction of any specific project under the jurisdiction of the board of land and natural resources in its water program, the board may repay the same to the director of finance, upon the expiration of ten years from the time of initial service to the project, which ten-year term shall be the development period, as repayment on account of the advancement. Such payments shall be made over the period of the next succeeding forty years after the termination of the development period, the total of which payments shall be sufficient to reimburse the State for redemption of the bonds together with interest paid by the State in respect of the same.

The foregoing method of repayment of advances shall be effective for each phase of any multi-phase project, the amortization period for the advancement commencing ten years from the time that facilities to provide service for each new project phase are put into operation.

In the event that changing use of the land in a project substantially increases revenues, or other circumstances make it reasonably possible or desirable for the board to accelerate the amortization of advances it shall be permitted to do so. [L 1961, c 166, pt of §3; am L 1963, c 114, §1; Supp, §86-20; HRS §174-21; am L 1987, c 306, §14]

" **§174-22 Land and water development projects; source of funds; disposition of receipts.** All moneys necessary for administrative costs, engineering surveys, economic studies, plans, maps, and for other water projects or purposes of the board of land and natural resources shall be allocated by the legislature out of appropriations made from the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to carry out the purposes of this chapter. In the event any moneys are expended for engineering surveys, economic studies, plans, and other expenses directly attributable to any land or water project, or for the establishment of any land or water project,

the amount of the expenditures shall be reimbursed to the state general fund from any funds received by the board for and on account of the project. [L 1961, c 166, pt of §3; Supp, §86-21; HRS §174-22; am L 1987, c 306, §15; am L 1993, c 280, §49]